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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 218.

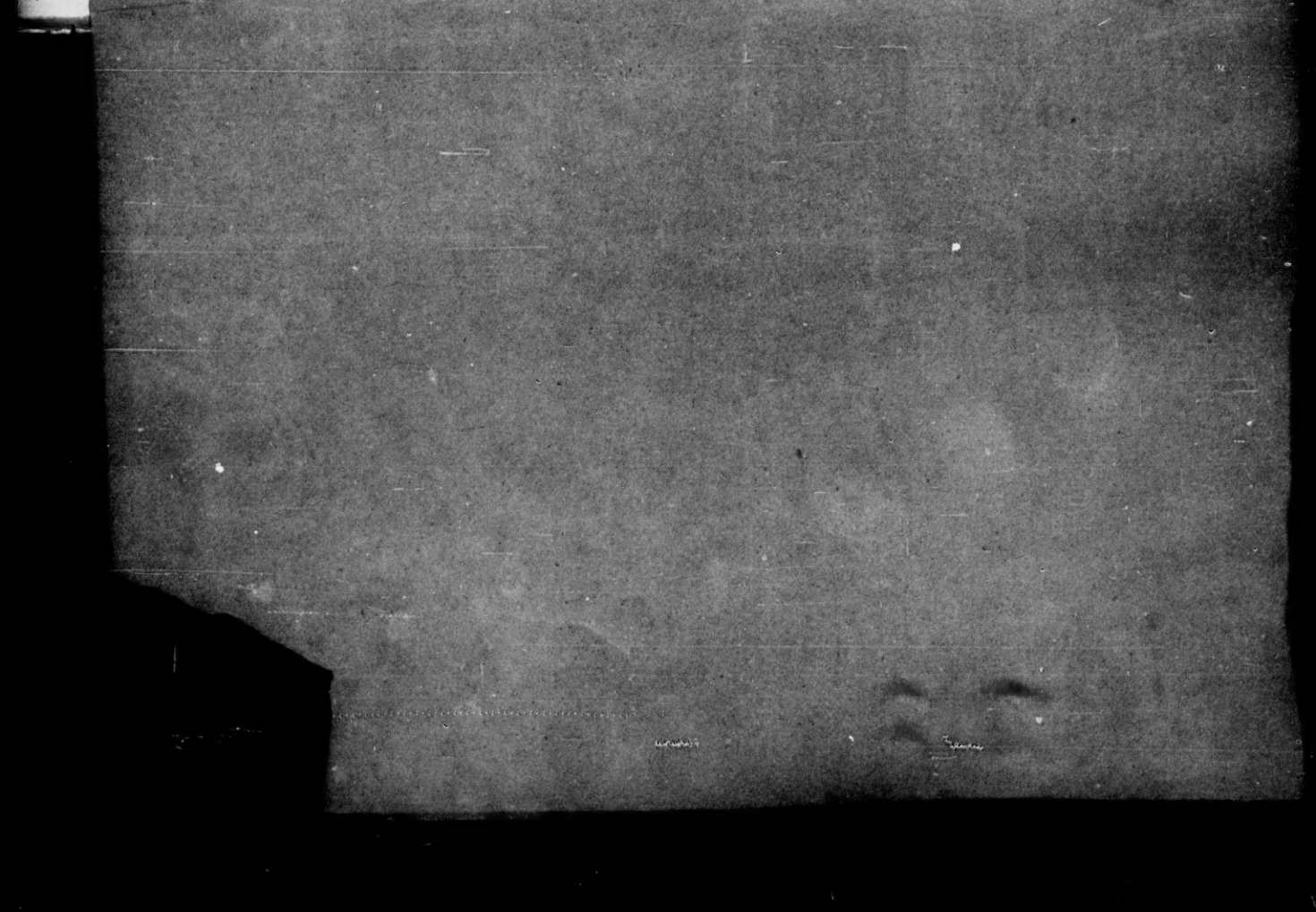
ST. ANNA'S ASYLUM FOR THE RELIEF OF DESTITUTE FEMALES AND HELPLESS CHILDREN OF ALL RELIGIOUS DENOMINATIONS, PLAINTIFF IN ERROR,

vs.

THE CITY OF NEW ORLEANS.

IN ERROR TO THE SUPREME COURT OF THE STATE OF LOUISIANA.

FILED JULY 28, 1879.



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1 No. 7124. Supreme court of La. Filed Ap'l 3rd, 1878.
(Signed) F. WALL, *D'y Cl'k.*

STATE OF LOUISIANA:

Appeal from the third dist. court for the parish of Orleans, Hon. F. A. Monroe, judge.

CITY OF NEW ORLEANS
vs.
ST. ANNA'S ASYLUM FOR THE RELIEF OF DESTITUTE FEMALES AND HELPLESS CHILDREN OF ALL RELIGIOUS DENOMINATIONS. } No. 890. (City tax series.)

Sam'l P. Blanc, esq., for pl'ff and appellee.
Messrs. Merrick, Race & Foster, for def't and appellant.
Returnable to supreme court first Monday in April, 1878.

2 *Petition.—Filed Feb'y 8th*, 1878.

City of New Orleans. Tax of 1876, No. 1298.

Received, 187 , of St. Anna Asylum, one thousand three hundred & fifty $\frac{0}{100}$ dollars for tax as described below.
Assessment rate of tax per $100. Amount, $90,000. 1½%, $1,350.
(Signed) W. J. COMERFORD,
For Administrator of Public Accounts.

Depscri'tion of real estate. Where situated.

(The streets between which the property lies are here given, the first named being that on which it fronts. When one or more streets are underscored, property facing.)
Assessment district, 1; No. of square, 32; where situated, Robin, Peter, Race & Front. (Sq. 1.) 345 x 232. $90,000.

No. 8945. Tax series of 1876. Superior district court. Filed May 26th, 1876.
(Signed) J. BURKE, *Clerk.*

3 *Agreement.—Filed Feb'y 8th*, 1878.—*Filed in superior dist. court July 13th*, 1876.

CITY OF NEW ORLEANS
vs.
ST. ANNA'S ASYLUM. } No. 8945.

It is hereby agreed that the judgment rendered in this case be opened and set aside, that the defendant be allowed to file its answer, and that the case be tried as to the right of the city to assess and collect taxes on the property of the St. Anna's Asylum for Destitute Females and all People's Children of all Religious Denominations.
(Signed) SAM. P. BLANC, *Ass't City Att'y.*
(Signed) MERRICK, RACE & FOSTER,
Att'ys for Defendant.

Answer.—Filed Febr'y 8th, 1878.—*Filed in superior dist. court July 17th*, 1876.

Sup'r dist. court for the parish of Orleans.

CITY OF NEW ORLEANS
vs.
ST. ANNA'S ASYLUM FOR DESTITUTE FEMALES and Helpless Children of all Religious Denominations. } No. 8945.

4 In this case the defendant comes and denies generally and specially each and every allegation in plaintiff's demand, and avers that this defendant is not liable for said sum of thirteen hundred and fifty dollars claimed of this defendant as assessed on the defendant's cotton-press, as square 32, bounded by Robin, Peters, Race, and Front streets, and said interest and costs, for this, that this defendant is a charitable institution, and all the funds, income, estate, buildings, and property of this corporation are constantly appropriated to the payment of the expenses of, to the support and maintenance of, and for the use of destitute females and helpless children of all religious denominations, now numbering over one hundred persons, inmates of this asylum, whereby the city and State are relieved to this extent of the burden of maintaining the same. This defendant further

5 avers that this defendant is exempt from taxation by the sixth section of this defendant's act of incorporation, approved the 29th day of April, 1853 (acts 1853, p. 231), which exempts "all the property, real and personal," belonging to this defendant (see acts 1836, page 135), and said exemption in said sixth section of said act of incorporation is a contract entered into by the State of Louisiana with this defendant, and covers said cotton-press, and exempts the same from assessment; and the constitution of 1868, and all other or subsequent statutes of said State of Louisiana authorizing the city of New Orleans to tax said property and tending to subject the said property of this defendant to city taxes, and all city ordinances levying a tax upon the property of this defendant and subjecting the same to assessment and to taxation, impair the obligation of this defendant's said contract with the State, and violate section ten of article one of the Constitution of the United States, and said assessment of said tax is null and void.

6 Wherefore this defendant prays that plaintiff's said demand for said taxes may be rejected, and that there may be judgment in favor of defendant and for costs.

(Signed) By MERRICK, RACE & FOSTER,
Att'ys for Defendant.

Consent of pl'ff to file answer.—Filed July 17th, 1876.

I consent to the filing of this answer.
(Signed) SAM. P. BLANC.

Testimony taken in open court on the 19th day of February, 1878, before Hon. F. A. Monroe, judge.—Filed February 19th, 1878.

3rd dist. court, parish of Orleans.

CITY OF NEW ORLEANS
vs.
ST. ANNA'S ASYLUM. } No. 890.

Counsel for plaintiff offers in evidence the city tax-bill of 1876, No. 1298, being in the name of St. Anna's Asylum.

By consent of counsel a copy of the said bill is herewith filed and marked A.

7 Also offers in evidence the ordinance No. 3349, being an ordinance entitled "Adopting the estimate of receipts for the year 1876."

Counsel for defendant objects to the introduction of the ordinance as testimony to show that the city of New Orleans is entitled to the taxes against this property, on the ground that it is a violation of the Constitution of the United States, sec. 10 and art. 110 of the constitution of the State of Louisiana.

Objection overruled, the court considering that the objection goes rather to the effect than to the admissibility, and counsel takes the foregoing objection as his bill of exception.

Counsel for plaintiff offers in evidence administration series No. 3358, adopting the estimate of expenditures for the year 1876; also ordinance No. 3367, administration series of the city of New Orleans, being an ordinance levying the city tax for the year 1876; also ordinance,

8 No. 3369, of the city of New Orleans, administration series, relative to the signing of tax-bills.

Also offers in evidence four copies of the New Orleans Republican, dated April 21st, May 2nd, May 11th, and May 20th, of 1876, containing the publications of the delinquent tax-list. It is agreed by counsel that it shall only be necessary to leave on file an extract from said publications so far as they relate to the defendant in the case.

Also offers in evidence the affidavit of Alexander P. Harrison, chief clerk of the finance department.

Also the assessment-rolls made for the taxes of 1876; but it is agreed by counsel that it shall only be necessary to file in this case an extract from said assessment-rolls so far as the defendant in suit is concerned.

Mr. SAMUEL H. KENNEDY sworn for defendant, and examined by Mr. MERRICK.

Q. Mr. Kennedy, are you acquainted with the institution called

9 the St. Anna's Asylum, belonging to the defendant in this case?

A. I know something of it; yes, sir.

Q. What relation do you stand towards it in the committees?

A. I am one of what is called a real-estate committee.

Q. What knowledge have you of the finances of the institution?

A. Well, my recollection is, and my present belief is, that they are not able to meet their current expenses except by borrowing money.

Q. The question I meant to ask was the means of knowledge in relation to it; whether you overlooked the accounts of the treasurer at any time?

A. I will state that Mrs. Kennedy is the treasurer of the asylum.

She asked me very frequently to look over their accounts and statement, and I so became familiar with their financial condition.

Q. Have you ever aided the association in negotiating funds?

A. I have.

10 Q. Now, be so kind as to state whether that institution is at present conducted as in accordance with the object of the charter of charitable institutions; whether that continues to be an institution which is devoted to the maintenance of destitute females and helpless children.

A. I think it is.

Q. What is the capacity of the building?

A. It is a large place; a large establishment. The actual number it can accommodate I cannot say.

Q. Isn't it well situated for those purposes?

A. I think so.

Q. Have you any recollection of the number of inmates there during the last year?

A. I cannot state that with any degree of positiveness. I know it is something like 150. I wouldn't say positively. I recollect some time that they had 108, and I think they increased.

Q. And the building is commodious?

A. I think so.

Q. Probably there were more during the year?

11 A. I mean at one time there was never less than a hundred; it embraces all denominations; the inmates, therefore, are very numerous.

Q. Are not these inmates entirely maintained and furnished with medical attendance, as far as you understand it?

A. I understand so. I don't think there is any source of maintenance outside of the asylum.

Q. But these other asylums in the city—they are maintained outside. I wish to call your attention to the fact whether they are not boarded, clothed, and medical attendance given them in case of sickness of the children, and a school kept in the building for the benefit of the children?

A. I so understand it.

Q. Now, is not this piece of property that is taxed in this instance, mentioned in this tax-list, bounded by Robin, Race, Peters, and Front streets, and is assessed at ninety thousand dollars, and the tax of $1,350—are not the revenues of this piece of property almost the entire

12 resources of the institution?

A. I say so. I think that, and perhaps some assistance from the city. I think they get a very small amount from the city per annum.

(Witness is shown the 25th Annual Report of the St. Anna's Asylum.)

A. This corroborates my statement. Nearly all of the revenues are derived from the rent from that cotton-press. Mr. J. P. Moore is the lessee of the cotton-press. I see large amounts paid to Leeds & Co. to put in a new press. They were obliged to put in that press, and it cost them a large amount of money.

Q. Why were they obliged to put that in?

A. From the fact that the press that they then had was too small to compress cotton satisfactorily for the present wants of the commerce of the city.

Q. That was essential in order to enable them to rent the cotton-press?

A. I don't think they could have rented it at all without it, for they have in general, in all of the presses in town, been obliged to do
13 the same thing.

Q. Do you remember on account of what children it is the city makes this little payment?

A. I do not.

Q. From your knowledge of this institution, it is not as clearly and distinctly charitable as any other charitable institution in the city of New Orleans?

A. Yes, sir; I should say so; I think there is no such thing in the establishment as a free ward for pay. I think you can get no such thing.

Q. I want to ask you if it is not one of that character of charities like the Orphan Boys' Asylum?

A. Yes, sir; as I am made to understand it.

Q. Beneficial to the city where it is, the site where this institution is, to help destitute people?

A. Yes, sir; that is my understanding about it.

Cross-examination:

Q. Where is the asylum proper situated?

14 A. On Prytania street, between St. Mary and Felicity road.

Q. The square which has been assessed is bounded by Robin, Peters, Race, and Front streets, and is, I understand you to say, a cotton-press?

A. Yes, sir.

Q. Is the entire property used for a cotton-press?

A. I believe so.

Q. Do any of the persons attached to the asylum live upon this cotton-press?

A. I don't know.

Q. Is it rented?

A. Yes; it is rented.

Q. Do you know to whom?

A. Mr. John P. Moore.

Q. And he leases it as a cotton-press?

A. As a fire-proof cotton-press.

Q. And the revenues are used exclusively for the asylum?

A. Exclusively, I think.

Q. You don't know of the revenues of the cotton-press being used to any other purpose?

A. I do not.

15 (Counsel for defendant offers in evidence the act of April 29th, 1853, page 29. Also, the act of 1836, approved on the 12th of March, entitled "An act for the relief of the Orphan Boys' Asylum of New Orleans."

It is agreed that said act need not be filed; that counsel shall have the right before any court to which this case may go to read said act and submit it to the court for consideration from the printed statutes.)

Document marked A.—Filed Febr'y 19th, 1878.

See petition on page 1 of this transcript, it being city tax-bill No. 1298, and the same document referred to as above.

Ordinance No. 3349.—Filed Febr'y 19th, 1878.

MAYORALTY OF NEW ORLEANS,
City Hall, January 4th, 1876.

No. 3349.—Administration series.

An ordinance adopting an estimate of the receipts or revenues of the city of New Orleans for the year 1876.

Be it ordained by the council of the city of New Orleans that the following estimate of receipts or revenues of the city of New Orleans for the year 1876 be, and the same is hereby, adopted:

Tax one and one-half per cent. on the valuation of real estate and personal property, as per assessment-rolls, on a total of $119,045,515		$1,785,682 72
Licenses	350,000	
Less outstanding metropolitan police warrants	80,000	
		270,000 00
Market revenues	220,000	
Less due Louisiana National Bank	150,000	
		70,000 00
Water-works		125,000 00
Wharves & landings from lessees		30,000 00
Law charges		30,000 00
Fines and fees		10,000 00
City railroads, bonus		5,000 00
Cemeteries		1,500 00
Ground rents		4,500 00
Bills receivable		10,000 00
Pound fees		500 00
Sugar Shed Company		1,000 00
Street assessments		1,000 00
Miscellaneous		5,000 00
Total		$2,349,182 72
Outstanding taxes and interest estimated collectable	2,000,000	
Less unpaid ordinances	900,000	
		1,100,000 00
Total		$3,449,187 72

Adopted by the council of the city of New Orleans, January 4th, 1876, veto of the mayor to the contrary, notwithstanding:

Yeas—Bertoli, Brown, Burke, Landry, McCarty, Pillsbury, 6.

Nay—Bouny, 1.

A true copy.

(Signed) J. H. HARDY, *Secretary.*

MAYORALTY OF NEW ORLEANS,
City Hall, June 8th, 1876.

We hereby certify the foregoing to be a true and correct copy of ordinance 3349, administration series, adopted January 4th, 1876, by the city council of the city of New Orleans, and duly promulgated.

(Signed) CHARLES J. LEEDS, *Mayor.*

[SEAL.] (Signed) J. H. HARDY, *Secretary.*

18 *Ordinance No. 3358.—Filed February 19th, 1878.*

MAYORALTY OF NEW ORLEANS,
City Hall, January 18th, 1876.

No. 3358.—Administration series.

An ordinance adopting an estimate of expenditures of the city of New Orleans for the year 1876.

Be it ordained by the council of the city of New Orleans that the the following estimate of expenditures (including police and schools) for the year 1876 be, and the same is hereby, adopted:

DEPARTMENT OF IMPROVEMENTS.

Streets, wages, &c	$206,600 00	
Streets, repairs, &c	68,625 00	
Streets, bridges, crossings, and wings	80,025 00	
Draining-machines	40,500 00	
Wharves and landings	7,800 00	
Administrator's office, salaries, and expenses	4,500 00	
		408,050 00

SURVEYOR'S OFFICE.

Salaries and office expenses	18,520 00	
Drainage expenses, etc	5,120 00	
		23,640 00

DEPARTMENT OF WATER-WORKS & PUBLIC BUILDINGS.

Water-works, pipes, machinery, &c	30,000 00	
Water-works, salaries, & wages	40,000 00	
19 Administrator's office, salaries, & expenses	4,050 00	
Insane asylum, provisions, rent, salaries, etc	19,150 00	
Court-house, repairs and salary of keeper	5,400 00	
Market-houses, repairs	2,500 00	
School-houses	5,000 00	
Public buildings (other than enumerated)	6,000 00	
Small-pox hospital	9,000 00	
Visiting physicians	3,000 00	
Public sinks	4,500 00	
House of Aged & Infirm	5,000 00	
City hall building, repairs, and office expenses	2,000 00	
		135,600 00

DEPARTMENT OF POLICE.

Administrator's office, salaries & expenses	4,480 00	

	Public squares, salaries and wages	7,200 00	
	Public pounds, salaries and rents	5,600 00	
	Work-house, provisions, salaries, etc	14,150 00	
	Boys' House of Refuge, provisions, &c	19,020 00	
	Cost of removal of sick & dead, &c	2,000 00	
			52,450 00

DEPARTMENT OF COMMERCE.

	Salaries & wages	25,300 00	
20	Office expenses	500 00	
			25,800 00

DEPARTMENT OF FINANCE.

	Salaries	20,000 00	
	Office expenses	2,000 00	
			22,000 00

DEPARTMENT OF PUBLIC ACCOUNTS.

	Salaries	13,000 00	
	Office expenses	2,000 00	
			15,000 00

DEPARTMENT OF ASSESSMENTS.

	Salaries	5,100 00	
	Office expenses	400 00	
	Assessment-rolls (State)	16,000 00	
			21,500 00

MAYOR'S OFFICE.

	Salaries	5,400 00	
	Office expenses	860 00	
			6,500 00

CITY HALL BUILDING.

	Salaries of librarian, keeper of archives, janiter, and porters		5,000 00

CITY COUNCIL.

	Salary of secretary and assistant	2,700 00	
	Stationery, etc	300 00	
			3,000 00

PRINTING.

21	Proceeding of council and promulgation of ordinances	4,500 00	
	Tax bills, reports, and advertisements;	6,000 00	
			10,500 00

TAX-BILLS, ETC.

Tax, mortgages, registers, salaries, and stationery	4,500 00	
Printing tax ledger, bills, etc	1,500 00	
Making tax-bills	6,000 00	
		12,000 00

CITY ATTORNEY.

Salaries	10,400 00	
Office expenses	1,000 00	
		11,400 00
Total		$752,440 00

BOARD OF HEALTH.

Salaries sanitary inspectors	9,800 00	
Salaries sanitary police officers	8,100 00	
Disenfectants	3,000 00	
		20,900 00

LIGHTING CITY.

Gas contracts	147,000 00	
Oil contracts	30,000 00	
		177,000 00

FIRE DEPARTMENT.

	Fireman's Charitable Association, city	140,000 00	
22	Fireman's Charitable Association, fifth district	8,400 00	
	Fireman's Charitable Association, sixth district	15,000 00	
	Fireman's Charitable Association, seventh district	5,400 00	
	Contingent, extra service	600 00	
			169,400 00
	Mayor and administrators		49,500 00

CRIMINAL JUSTICE.

Superior criminal court, salaries & stationery	12,000 00
Superior criminal court, clerk's fees	12,000 00
First district court, clerk's fees	12,000 00
Criminal sheriff, parish prison	65,000 00
Criminal sheriff's fees	25,000 00
District attorney's fees	7,500 00
Jury commissioners	1,000 00
Municipal police courts	20,000 00
Fifth & seventh justices of the peace	10,000 00
"Black Maria," conveying prisoners	1,500 00
Rent first district court	3,000 00

23	Rent metropolitan police station	4,200 00	
	City physicians, salaries, etc	1,200 00	
	Police officers on duty in municipal police courts	7,200 00	
			181,600 00

MISCELLANEOUS.

Law charges	30,000 00	
Support of orphans	36,788 00	
Coroners, salaries, etc	13,000 00	
Recording deaths	500 00	
Interest on current accounts	5,000 00	
Judgments	30,000 00	
City debt, interest and redemption	307,500 00	
City debt, interest	1,000,000 00	
Metropolitan police, $499,000; estimated to be collectable	400,000 00	
Public schools, $297,600; estimated to be collectable	232,200 00	
Park	50,000 00	
		1,980,700 00
Contingent		2,354 72
Grand total		$3,449,182 72

24 Adopted by the council of the city of New Orleans January 18th, 1876, the veto of the mayor to the contrary notwithstanding:

Yeas—Bertoli, Brown, Burke, Landry, McCarthy, Pillsbury—6.

Nay—Bouny—1.

A true copy.

(Signed) J. H. HARDY, *Secretary.*

MAYORALTY OF NEW ORLEANS,
City Hall, June 8th, 1876.

We hereby certify the above to be a true and correct copy of ordinance 3358, administration series, adopted January 18th, 1876, by the city council of the city of New Orleans, and duly promulgated.

(Signed) CHAS. J. LEEDS, *Mayor.*

[SEAL.] (Signed) J. H. HARDY, *Secretary.*

Ordinance No. 3367.—Filed February 19th, '78.

MAYORALTY OF NEW ORLEANS,
City Hall, January 26, 1876.

No. 3367.—Administration series.

An ordinance levying city taxes for the year 1876.

25 Be it ordained by the council of the city of New Orleans that the following taxes be, and are hereby, levied and assessed for the year 1876, on all taxable property within the limits of the city of New Orleans, according to the assessment of said year, to wit: City debt tax, for redemption and payment of interest on bonded debt, twenty-six cents on every one hundred dollars of valuation; police tax, forty-two cents on every one hundred dollars of valuation; school tax, twenty-five cents on

every one hundred dollars of valuation; current city expense tax, fifty-seven cents on every one hundred dollars of valuation. Total tax, one and one-half per cent. on an assessment of $119,045,515.

Adopted by the council of the city of New Orleans January 25, 1876, the veto of the mayor to the contrary notwithstanding.

Yeas—Bertoli, Brown, Burke, Landry, Pillsbury—5.

Nays—Bouny—1.

(Signed) J. H. HARDY, *Secretary.*

26 MAYORALTY OF NEW ORLEANS,
City Hall, June 8th, 1876.

We hereby certify the within to be a true and correct copy of ordinance 3367, administration series, adopted January 25th, 1876, by the city council of the city of New Orleans, and duly promulgated.

(Signed) CHAS. J. LEEDS, *Mayor.*
[SEAL.] (Signed) J. H. HARDY, *Secretary.*

Ordinance No. 3369.

MAYORALTY OF NEW ORLEANS,
City Hall, January 26, 1876.

No. 3369.—Administration series.

An ordinance relative to the signing of tax-bills and licenses for the year 1876.

Be it ordained by the council of the city of New Orleans that the following persons recommended by the administrator of public accounts be confirmed and approved as officers of the department of public accounts to sign for said administrator in the cases named, to wit:

27 Benjamin H. Watkins, William J. Comerford, and Charles Paurel to sign tax-bills; Henry A. Antz to sign licenses.

Adopted by the council of the city of New Orleans January 25th, 1876.

(Signed) CHARLES J. LEEDS, *Mayor.*
A true copy.
(Signed) J. H. HARDY, *Secretary.*

MAYORALTY OF NEW ORLEANS,,
City Hall, June 8th, 1876.

We hereby certify the within to be a true and correct copy of ordinance 3369, administration series.

Adopted January 25th, 1876, by the city council of the city of New Orleans, and duly promulgated.

(Signed) CHAS. J. LEEDS, *Mayor.*
[SEAL.] (Signed) J. H. HARDY, *Secretary.*

Extract from N. O. Republican of April 21st, 1876.—*Filed Febr'y 19th*, 1878.

28 Notice.—To delinquent tax-p'ers.

DEPARTMENT OF FINANCE,
City Hall, April 21st, 1876.

All tax-payers to the city of New Orleans whose names are hereinafter set forth or referred to in the accompanying list will take notice that

and expenses, including costs of clerk and sheriff and all costs of court.

Furthermore, the aforesaid tax-payers are notified that this notice and publication constitutes legal citation and service of citation upon each and every party named and referred to in the said list, and the said party and parties are hereby required to act accordingly.

(Signed) ED. PILSBURY,
Administrator of Finance.

No. of tax-bill, 1298. St. Anna's Asylum. Amount, $1,350.00

35 *Affidavit of A. P. Harrison.—Filed Febr'y 19th*, 1878.

CITY OF NEW ORLEANS
vs.
SAMUEL BOYD AND SUNDRY OTHER DELINQUENT TAX-PAYERS. } No. 1 to No. 11,010, inclusive.

Before superior district court for the parish of Orleans.

Alexander P. Harrison, chief clerk of the administrator of finance of the city of New Orleans, being duly sworn, doth depose and say that the notice required by law to be given delinquent tax-payers has been duly published in the "New Orleans Republican," the official journal, viz, on the 21st April, the 2nd May, the 11th May, and the 20th May, in the year 1876, as will appear from the four copies of said newspaper of the dates aforesaid hereto annexed and made part of this affidavit.

That the tax-bills filed in court and published as aforesaid in said newspaper are true and correct bills as made from the assessment-rolls and lists and valuations for the tax of the year 1876, returned
36 to the administrator of finance by the State board of assessors.

(Signed) A. P. HARRISON,
Ch'f Cl'k Dep't of Finance.

Sworn to and subscribed before me this 6th day of June, 1876.
[SEAL.] (Signed) W. T. HOUSTON,
First Justice of the Peace for the Parish of Orleans.

Extract from assessment-rolls for the year 1878.—*Filed Febr'y 19th*, 1878.

Square No. 32, bounded by Robin, Peters, Race, and Front streets. Number of bill, 1298. St. Anna's Asylum square. Measurement, 245 × 232. Value of real estate, $90,000.00. Total, $90,000.00.

OFFICE BOARD OF STATE & CITY ASSESSORS,
PARISH OF ORLEANS, LA.,
No. 20 CARONDELET STREET,
New Orleans, October 30th, 1875.

First assessment district, $7,224,720. First municipal district, grand total assessment, seven million two hundred and twenty-
37 four thousand seven hundred and twenty dollars.

We, Joseph L. Herwig, George E. Paris, Oride C. Blandin, Dominick Urban, H. De Fuentes, Aristide Dejoie, William Kern, board of State and city assessors in and for the parish of Orleans, do solemnly swear that we have fully and faithfully assessed all persons and property in our parish for the year 1875; that we have given notice to all

tax-payers that we have commenced assessing their property, and have kept the rolls open from the first day of August to the first day of September, and that we have made every possible effort to make said assessment a fair and full cash valuation to the best of our abilities. So help us God.

(Signed)	J. L. HERWIG,	*Assessor*	*1st District.*
"	GEO. E. PARIS,	"	*2nd* "
"	O. C. BLANDIN,	"	*3rd* "
"	D. URBAN,	"	*4th* "
"	H. DE FUENTES,	"	*5th* "
"	A. DEJOIE,	"	*6th* "
"	W. KERN,	"	*7th* "

38 Sworn to and subscribed before me this 30th day of October, 1875.

(Signed) WM. H. HOLMES,
Second Justice of the Peace for the Parish of Orleans.

I, Joseph L. Herwig, do solemnly swear or affirm that I have set down in the assessment-rolls the names of all the taxable persons residing within my assessment district, and all real estate or other taxable property situated and being in my assessment district, according to the best of my information, and that I have used all legal means provided to secure the necessary information; and that the said assessment-rolls contains a true statement of the taxable personal estate of each person named in the roll, as ascertained by the declaration or affidavit of such person or by such other means as were in my power; and that I have, in all cases where deemed necessary, interrogated on oath or affirmation each person marked on the rolls to be assessed for property in the form and manner provided by law.

(Signed) J. L. HERWIG.
39 *State and City Assessor, Parish of Orleans, First District.*

Sworn to and subscribed before me this 30th day of October, 1875.

(Signed) WM. H. HOLMES,
Second Justice of the Peace for the Parish of Orleans, La.

Act of incorporation.—Filed Febr'y 19th, 1878.

An act to incorporate the St. Anna's Asylum for the Relief of Destitute Females and Helpless Children of all Religious Denominations.

Whereas it is proper that the security of a charter, under suitable restrictions, should be granted to persons belonging to any religious denomination who desire to associate themselves together according to their peculiar faith for purposes of benevolence; whereas the persons hereinafter named, professors of the religious faith denominated Protestant, have been for some years past associated under a charter bearing date the twenty-second of April, one thousand eight
40 hundred and fifty, framed under the act of the thirtieth of April, one thousand eight hundred and forty-seven, but are now desirous of extending their usefulness under a new title, and under provisions which they believe will be more satisfactory in point of security to persons friendly to the philanthropic object which they have in view: Therefore,

SECTION 1. Be it enacted by the senate and house of representatives of the State of Louisiana in general assembly convened, That all those

persons who are now members of the said association, and such other free white persons as may, in accordance with the provisions of this charter, b hereafter associated with them, are hereby created a corporation under the title of "St. Anna's Asylum for the Relief of Destitute Females and Helpless Children of all Religious Denominations," and under that name shall have perpetual succession, and shall be capable to taking, receiving, purchasing, possessing, and enjoying all kinds of property whatever, real or personal, by gift, grant, sale, bequest, exchange,
41 or by any other mode of conveyance or transfer whatsoever, and the same may sell, convey, or dispose of, under the restrictions hereinafter provided, and they shall administer the same for the furtherance of the object of this incorporation and in accordance with the conditions of this charter; and they shall also be capable to sue or be sued, plead and be impleaded, in all courts and elsewhere, and to have a common seal. The object of this corporation is the charitable object designated in its title.

SEC. 2. Be it further enacted, etc.: Any free white person may become a member of this corporation for one year by paying into the treasury thereof the sum of five dollars, and may thereafter continue to be such member by the annual payment of the like sum; and any free white person may become a life member of this corporation by payment, at any one time, into the treasury the sum of fifty dollars. Every member shall be entitled to vote for directors.

42 SEC. 3. Be it further enacted, etc.: The affairs of the corporation shall be managed by a board of directers, composed during the first year and until the ensuing election of the following members: Mrs. G. N. Stanton, wife of T. N. Stanton, president; Mrs. C. Charles, wife of Richard Charles, vice-president; Mrs. A. M. Caruthers, widow of M. Caruthers, treasurer; Mrs. W. T. Dewey, wife of W. T. Dewey, secretary; Mrs. C. Toby, widow of Thomas Toby; Mrs. T. Clarke, wife of J. L. Clarke; Mrs. S. W. Day, wife of J. W. Day; Mrs. M. Turner, wife of Mortimer Turner; Mrs. A. Jennings, wife of N. R. Jennings; Mrs. E. A. Bradford, wife of E. A. Bradford; Mrs. A. J. Coffee, wife of A. J. Coffee; Mrs. M. Luzembourg, wife of Dr. Luzembourg; Mrs. E. Parmele, wife of Edward Parmele; Mrs. Q. L. Lonsdale, wife of H. T. Lonsdale; Mrs. A. Briggs, wife of Charles Briggs; Mrs. O. A. Turner, wife of S. H. Turner; Mrs. W. H. Cook, wife of W. H. Cook; Mrs. J. N. Lea, wife of T. N. Lea; Mrs. E. T. Griffin, wife of Adam Griffin; Mrs. E. D. Hyde, wife of E. D. Hyde; Mrs. J. A. Maybin, wife of
43 J. A. Maybin; who shall continue in office until the second Monday in January, one thousand eight hundred and fifty-four, on which day a meeting of the members of the society shall be held, at the asylum, between the hours of 10 a. m. and 2 p. m., when the said members shall elect, by ballot, twenty female members to serve as directors for the ensuing year. [A similar election shall take place the second Monday of January in every following year.—Approved.—ALF'D ROMAN, *Clerk.*] But if from any cause an election of directors should fail to be made on that day, the board of directors of the previous year shall continue in office until their successors be elected. The directors shall always be selected from the various religious denominations, provided that in no case can there be elected so great a number of any one denomination as to give such denomination a majority of the whole board for the time being. Nine directors shall constitute a quorom during the months of November, December, January, February, March, and April, and five during the residue of the year. The said directors shall,
44 within eight days after their election, appoint by ballot from

among their number a president, a vice-president, a treasurer, and a secretary.

SEC. 4. Be it further enacted, etc., That the said president and directors shall superintend, manage, and control, subject to the limitations hereinafter provided, all the affairs and interests of this corporation during their term of office; and they may adopt such rules and by-laws for that purpose as they may deem necessary, and as may not be inconsistent with the object and terms of this charter, or with the constitution and laws of this State or of the United States. The said board of directors shall, in the name of this corporation, purchase, take, accept, and receive, by public act or otherwise, all property, real or personal, which shall be acquired by purchase, donation inter vivos or mortis causa, or otherwise, and the same shall hold and manage for the benefit of this corporation, subject to the stipulations of this charter and the lawful conditions of every such donation or legacy
45 All acceptances of immovable property, and all alienations of immovable property and stocks, shall be signed by the president and treasurer, after the declared will of a majority of the board of directors has been duly inscribed on the minutes of said corporation: Provided, always, That no alienation of the immovable property or stocks owned by this corporation shall be made or have any legal validity unless accompanied by a written certificate of approval of such alienation by the mayor of the city of New Orleans, setting forth that he has duly examined and considered such proposed alienation, and is satisfied such alienation is for the advantage of said corporation. The said certificate shall always be deposited, and recorded by a proper act, in the office of a notary public: Provided also, That all proceeds of sale of any immovable property shall be by said board reinvested as speedily as possible in other immovable property.

46 SEC. 5. Be it further enacted, etc., That the board of directors shall, in each and every year, as soon as may be after the appointment of the officers above mentioned, appoint as a committee, by an order entered on the minutes, five competent persons, to be chosen from the male members of this corporation. The said committee shall be styled the "real estate committee," and shall serve for one year from the date of their appointment. In case of the death or resignation of any member of said committee the board of directors shall, at their next meeting, fill the vacancy so occurring. The said committee shall appoint one of their number chairman, whose duty it shall be to preside over the deliberations of said committee and communicate with the board of directors. It shall be the province of said committee to assist, with their advice, the board of directors in all matters pertaining to the real estate of said corporation, in the investment of funds, in the ordering of new buildings, repairs, and improvements, and in making
47 contracts for the same and in disposing of any property of said corporation, by sale, exchange, or otherwise, in conformity with the provisions of this charter.

SEC. 6. Be it further enacted, etc., That the said corporation shall enjoy the same exemption from taxation as was enacted in favor of the "Orphan Boys' Asylum of New Orleans" by the act approved March twelfth, one thousand eight hundred and thirty-six, entitled "An act for the relief of the Orphan Boys' Asylum of New Orleans."

SEC. 7. Be it further enacted, etc., That the association named in the preamble of the present act is hereby authorized, if its members shall so desire, after the present corporation is organized, to transfer all or

any part of the property and assets of said association to the corporation by this act created, and for the uses and purposes of this charter, and surrender the corporate franchises of said association.

(Signed) E. WARREN MOÏSE,
Speaker of the House of Representatives.

48 (Signed) W. F. GRIFFIN,
President Pro Tem. of the Senate.

Approved April 29th, 1853.

(Signed) P. O. HEBERT,
Governor of the State of Louisiana.

OFFICE OF THE SECRETARY OF STATE.

I certify the foregoing to be a true copy of the original act deposited in this office.

In witness whereof I have affixed hereunto the seal of the State and my official signature, at Baton Rouge, this ninth day of May, A. D. one thousand eight hundred and fifty-three, and of the Independence of the United States of America the seventy-seventh.

[L. S.] (Signed) ANDREW S. HERRON,
Secretary of State.

Submission.—Extract from minutes, Feb'y 19, '78.

3rd dist. court, parish of Orleans.

CITY OF NEW ORLEANS *vs.* ST. ANNA'S ASYLUM. } No. 890.

This case came on this day for trial.

49 Present, S. P. Blanc, for pl'ff, E. T. Merrick, for def't, when, after hearing pleadings, evidence, and counsel, the court took time to consider.

Judgment.

3rd dist. court, parish of Orleans.

CITY OF NEW ORLEANS *vs.* ST. ANNA'S ASYLUM. } No. 880.

For the reasons this day orally assigned by the court, the law and evidence being in favor of plaintiff—

It is ordered, adjudged, and decreed that there be judgment in favor of plaintiff and against defendant, the St. Anna's Asylum, for the sum of one thousand three hundred and fifty dollars, with 10 % per annum interest from April 1st, 1877, till paid, twenty-five cents cost of advertising, and all costs of suit, with lien and privilege according to law on the property described in the tax-rolls and bills or claims on file; and it is further ordered and decreed that for the payment
50 of the sheriff's and clerk's costs they do have a lien and privilege upon the judgment herein rendered.

Judgment rendered March 12th, 1878, and signed March 16th, 1878.

(Signed.) F. A. MONROE, *Judge.*

Motion and order of appeal.—Filed March 20th, 1878.

Third dist. court, for the parish of Orleans.

CITY OF NEW ORLEANS
vs.
ST. ANNA'S ASYLUM FOR THE RELIEF OF DESTITUTE Females and Helpless Children of all Religious Denominations. } No. 890.

On motion of Merrick, Race & Foster, of counsel for the defendant, and on suggesting that the defendant in this case feels aggrieved at the final judgment rendered against the said defendant in this case,. and signed on the 16th day of March, inst.—

It is ordered by the court that a suspension appeal be allowed the said defendant, returnable to the supreme court on the first
51 Monday of April, 1878, upon the said defendant's executing its obligation in favor of the clerk of this court, in the sum of twenty-four hundred dollars, with good and solvent security, and conditioned according to law.

Bond of appeal.—Filed March 20th, 1878.

Know all men by these presents that we, St. Anna's Asylum for the Relief of Destitute Females and Helpless Children of all Religious Denominations, a corporation domiciled in New Orleans, as principal, and Samuel H. Kennedy and Thomas A. Adams, of the city of New Orleans, as sureties, are held and firmly bound unto Benjamin Armbruster, clerk of the third district court for the parish of Orleans, his successors, executors, administrators, and assigns, in the sum of twenty-four hundred dollars, for the payment whereof we bind ourselves, our heirs, executors, and administrators, firmly by these presents. Sealed with
52 our seals and dated, in the city of New Orleans, on this 20th day of March, in the year of our Lord one thousand eight hundred and seventy-eight.

Whereas the above bounden St. Anna's Asylum for the Relief of Destitute Females and Helpless Children of all Religious Denominations has this day filed a motion of appeal from a final judgment rendered against it in the matter of the suit of the City of New Orleans vs. the said St. Anna's Asylum of Destitute Females and Helpless Children of all Religious Denominations, No. 890, in the third district court, for the parish of Orleans, on the twelfth day of March, 1878, and signed on the 16th day of March, 1878:

Now, the condition of the above obligation is such that the above-bound St. Anna's Asylum for the Relief of Destitute Females and Helpless Children of all Religious Denominations shall prosecute its appeal, and shall satisfy whatever judgment may be ren-
53 dered against it, or that the same shall be satisfied by the proceeds of the sale of its estate, real or personal, if it be cast in the appeal; otherwise, that the said Samuel H. Kennedy and Thomas A. Adams shall be liable in its place.

St. Anna's Asylum for the Relief of Destitute Females and Helpless Children of all Religious Denominations.

[L. S.] (Signed) Mrs. JAMES CLARKE, *President.*
[L. S.] (Signed) SAMUEL H. KENNEDY.
[L. S.] (Signed) THOMAS A. ADAMS.

Signed in the presence of—
(Signed) HENRY N. OGDEN.

Certificate of clerk.

State of Louisiana, third district court, for the parish of Orleans.

I, P. J. Sullivan, deputy clerk of the third district court for the parish of Orleans, do hereby certify that the foregoing fifty-five pages do contain a true and correct transcript of all the proceedings had, of
54 all the evidence adduced, and of all the documents filed in the suit entitled "The City of New Orleans vs. St. Anna's Asylum for the Relief of Destitute Females and Helpless Children of all Religious Denominations, No. 890, city tax series," of the docket of this court.

New Orleans, April 1st, 1878.

[L. S.] (Signed) P. J. SULLIVAN,
Deputy Clerk.

UNITED STATES OF AMERICA,
State of Louisiana:

Supreme court of the State of Louisiana.

TRANSCRIPT OF APPEAL.—FILED APRIL 3RD, 1878.

Motion and affidavit for trial by reference.—Filed December 20th, 1878.

In the supreme court, State of Louisiana.

CITY OF NEW ORLEANS
vs.
ST. ANNA ASYLUM. } No. 7124.

On motion of Sam'l P. Blanc, assistant attorney for the City of
55 New Orleans, and on suggesting reference to the affidavit hereto annexed made under and by virtue of the 9th sec. of act No. 45 of acts of 1870, extra session, it is ordered that the above case be called and set for hearing by preference.

Affidavit.

Personally appeared Sam'l P. Blanc, who, being first sworn, says that the above-entitled case is one of serious public interest, in which a speedy decision is desirable.

(Signed) SAM'L P. BLANC.

Sworn to and subscribed before me this 19th day of December, 1878.

(Signed) T. McC. HYMAN,
D'y Clerk.

Order to fix case.—Extract from the minutes, Friday, December 20th, 1878

The court was duly opened. Present, their honors Thomas C. Manning, chief justice and Robert H. Marr, Alcibiade De Blanc, William B. Spencer, associate justices.

56 CITY OF NEW ORLEANS
vs.
ST. ANNA ASYLUM. } No. 7124.

On motion of Sam'l P. Blanc, assistant city attorney for the City of

New Orleans, and the affidavit on file being considered, it is ordered by the court that this case be called and set for hearing with preference. (See agreed statement of facts, p. 77.)

Argued and continued.—Extract from the minutes, Thursday, January 16th, 1879.

The court was duly opened. Present, their honors Thomas C. Manning, chief justice and Robert H. Marr, Alcibiade De Blanc, Edward D. White, associate justices. Absent, William B. Spencer, associate justice.

CITY OF NEW ORLEANS
vs.
ST. ANNA ASYLUM. } No. 7124.

This case was called for trial, and having heard argument from Samuel P. Blanc, esq'r, assistant city attorney, on behalf of the plaintiff, appellee herein, and from Edwin T. Merrick, esq're, of counsel
57 for the defendant and appellant, the court ordered the case to be continued for further argument till to-morrow, Friday, the 17th instant.

Cause submitted.—Extract from the minutes, Friday, January 17th, 1879.

The court was duly opened. Present, their honors Thomas C. Manning, chief justice, and Robert H. Marr, Alcibiade De Blanc, William B. Spencer, Edward D. White, associate justices.

CITY OF NEW ORLEANS
vs.
ST. ANNA ASYLUM. } No. 7124.

This case was called for resumption of trial, and having heard argument from Samuel P. Blanc, esq., assistant city attorney, on behalf of plaintiff and appellee, and from Edwin T. Merrick, esq., of counsel for the defendant, appellant herein, the court took said case under advisement upon the briefs on file and to be filed; the brief of appellant to be filed on or before the 27th instant, and that of appellee within three days thereafter.

58 *Judgment and decree.—Extract from the minutes, Monday, March 3rd, 1879.*

The court was duly opended, pursuant to adjournment. Present, their honors Thomas C. Manning, chief justice, and Robert H. Marr, Alcibiade De Blanc, William B. Spencer, Edward D. White, associate justices.

His honor Justice White pronounced the judgment and decree of the court in the following cases:

* * * * * * *

CITY OF NEW ORLEANS
vs.
ST. ANNA ASYLUM. } No. 7124.

On appeal from the third district court for the parish of Orleans.

The judgment is affirmed.

(Mr. Justice Marr dissents in this case and reserves the right to file his reasons hereafter.)

Opinion of the court.—Filed March 3rd, 1879.

CITY OF NEW ORLEANS
vs.
ST. ANNA'S ASYLUM. } No. 7124.

59 The defendant, a corporation created for charitable purposes by legislative charter in 1853, having acquired in 1874 a piece of real estate situated in this city consisting of lots of ground with the buildings and improvements thereon, resist the payment of the taxes levied by the city of New Orleans for 1876, on the ground of exemption.

It is conceded on both sides that the property claimed as exempted is a fire-proof cotton-press, now rented and used as such, and in no manner directly used by the asylum, although the revenues thereof are applied to the benevolent and charitable purposes of the corporation.

Under this state of facts we are of the opinion that the mere ownership of the property by the corporation, and the application by it of the revenues derived from the rent, does not constitute the actual use covered by the exemption from t xation of property actually used for charitable purposes. We apprehend such exemption to apply to prop-
60 erty directly used, and not indirectly by the application of the rents which may result from it. These conclusions are in accord with the jurisprudence of the State. Nearly twenty years ago this court drew the distinction between property used by a charitable corporation and property from which it derived revenue. (New Orleans vs. Congregation Dispersed of Judah, 15 A., 390.) Subsequently, in New Orleans vs. Bank of Lafayette, 27A., 376, this court held that art. 118 of the constitution, giving power to the general assembly to exempt property actually used for church, school, or charitable purposes, was enumerative, and hence limitive. That all grants of exemption, made after the adoption of this provision, of property not in terms covered by it, were void, and that all prior grants of exemption inconsistent therewith were repealed thereby unless protected by contract. In the enforcement of these conclusions in City vs. St. Patrick's Hall
61 Association, 28 A., 512, it was determined that property occupied by a charitable association for the execution of the purpose of its being might be constitutionally exempted by the general assembly from taxation, but that an exemption of property belonging to a corporation and not used by it directly, but only used by applying the revenues received from it, was violative of the constitutional provision already referred to, and hence stricken with nullity.

Under this settled jurisprudence there can be no doubt of the liability of the property in controversy, unless removed from the general rule by some exception. Such exception is claimed as resulting from the charter of the defendant corporation, by which it is contended that a contract was created divesting the State of all power to repeal the exemption claimed.

The provision of the charter relied on is as follows: "That the said corporation shall have the same exemption from taxation as was
62 enacted in favor of the Orphan Boys' Asylum of New Orleans by the act approved March 12th, 1836." The provision of the act of 1386 referred to is as follows: That from and after the passage of this act all the property, real and personal, belonging to the Orphan Boys' Asylum of New Orleans be, and the same is hereby, exempted from all taxation either by the State, parish, or city in which it is situated, any law to the contrary notwithstanding."

The mere existence of this statute would not alone entitle the property to exemption, for, as we have already seen, all statutory exemptions incompatible with the existing constitutional provision have by it been repealed. The solitary question therefore is was this exemption a contract of such a nature as to invest the corporation with such a right as to remove it from all subsequent legislative control. We think
63 not; and in reaching this conclusion we waive all controversy as to the power of the general assembly to divest its successors of so essential an attribute of sovereignty as the power of taxation. We grant to its fullest extent the doctrine of contract as resulting from the creation by the general assembly of a private corporation. When the act of incorporation relied on was passed the general laws of the State provided as follows: A corporation legally established may be dissolved, 1st, by an act of the legislature, if they deem it necessary or convenient to the public interest, provided that when the act of incorporation imports a contract, on the faith of which individuals have advanced money or engaged their property, it cannot be repealed without providing for the reimbursement of the advances made, or making full indemnity to such individuals. * * * (C. C. of 1825, art. 438.) This article existed in the code of 1808, and indicates an anticipation by the wise and enlightened men by whom our code was compiled not
64 only of the doctrine of contract subsequently enunciated by the Supreme Court of the United States, but also a keen appreciation of the dangers to society resulting from paralyzing the power of subsequent legislatures to legislate for the public convenience or well being.

This general provision being in existence at the time of defendant's grant it became by necessary legal implication a part of it, and reserving, as it did, the right to repeal the charter whenever convenient to the public interest, reserved also, as the greater contained the less, the same absolute power of modification. The charter was a special law and contained no repealing clause. (Acts of 1853, p. 228.) It did not therefore expressly repeal the general law, nor did it do so by implication, for there is no incompatibility between the grant of a franchise or privilege and a reservation of the power to revoke when deemed necessary for the public interest. Even had the act of incor-
65 poration contained the usual clause repealing all laws inconsistent therewith, our conclusion would be the same, for the repealing clause would have to be express in its terms to include the repeal of a general law not in terms conflicting with the later law, nor can it be said that the general law was not intended to apply to corporations by which a contract was created, for it in express words embraces charters of that character. The application of a prior general law to legal rights acquired by an act of incorporation would be only applying to such rights the legal provisions applicable to other legal obligations, for the general theory as to the existence of legal rights is that they are to be examined with reference to the general law in being at the time of their acquisition. In Guillotte vs. New Orleans, 12 A., p. 434, Mr. Chief Justice Merrick said: "In these and like cases there is no pretense that the obligation of a contract had been impaired because the law in force at the time enters into and forms part of the contract."

66 We need not, however, seek to fortify our conclusions by authority drawn from analogy. That the provisions of the article of the code to which we have referred entered into the grant of subsequent legislative charters has long since been enunciated from this

bench. "I have," said Mr. Justice Rost, as the organ of this court in Palfrey vs. Paulding, 7 A., 366, "examined the case on the hypothesis that an acceptance of the act of 1839 on the part of the bank was necessary. But I do not wish to be understood as deciding that point. If charters are contracts, they are contracts which the legislature may in certain cases dissolve. The powers it possesses over charters subsequently granted by the first paragraph of art. 438, C. C., are not the less real for having been dormant heretofore." * * *

The jurisprudence of the Supreme Court of the United States and of the States of this Union is full of examples of the enforcement of the principles which this court thus expressed and to which we give
67 our adhesion. In many of the other States, as a consciousness developed of the far-reaching effects of the doctrine enunciated by the Supreme Court of the United States in Dartmouth vs. Woodward, general laws were enacted reserving to the law-making power the right to alter or repeal any subsequent charters. Such statutes have been uniformly held to enter into all charters granted thereafter, and thereby to take them out of the operation of the law of contracts, as taught in Dartmouth vs. Woodward.

That a general power to repeal or modify a charter enters into the charter, and, pro tanto, divests it of the character of a contract, is now the settled opinion of the Supreme Court of the United States. "Such power also—that is, the power to alter, modify, or repeal an act of incorporation," said Mr. Justice Clifford in Miller vs. The State, 15 Wall., 488, "is frequently reserved to the State by a general law applicable to all acts of incorporation or to certain classes of the same, as the case may be, in which case it is clear that the power may be exercised
68 whenever it appears that the act of incorporation is one which falls within the reservation, or that the charter was granted subsequent to the passage of the general law, even though it contains no such condition nor any allusion to such a reservation." Said the same learned justice, as the organ of the court in the case of Holyoke Company vs. Lyman, 15 Wall., 511, in speaking of a claimed contractual exemption from taxation resulting from a charter: "Such a charter when accepted by the corporators is undoubtedly a contract that the powers, privileges, and franchises granted shall not be restrained, controlled, or destroyed without their consent unless a power for that purpose is reserved to the legislature in the act of incorporation or in some prior general law in operation at the time the act of incorporation was passed." (See also Tomlinson vs. Branch, 15 Wall., 469; Railroad Company vs. Maine, 96 United States, 510.)

These authorities alone would be decisive of the present con-
69 troversy; but they do not stand alone; they are but the expression of the concluded opinion of the various State courts where the question has been presented for adjudication. "But all acts of incorporation," says the supreme court of Massachusetts in General Hospital vs. State Mutual Assurance Company, "passed since the eleventh of March, 1831, which contain no express provision limiting their duration, are, by the provisions of the statutes of the Commonwealth existing from that period to the present, subject to alteration, amendment, or repeal." The act incorporating the defendants was passed in the year 1844, long after the enactment of the revised statutes, and was of course accepted by the corporators subject to the provisions of those statutes." (4 Gray, 234.)

A charter is a contract between the State and the corporators, and the corporation takes the grant subject to the limitations contained in

the act of incorporation. If no power of repeal is reserved none can be exercised, but when a charter itself or a general statute
70 provides that the charter is subject to repeal by the legislature at its pleasure, the legislature has the right to exercise its power summarily and at will, and its action being a legislative and not a judicial act, cannot be reviewed by the courts unless it should exercise its powers in such a manner as to clearly violate the principles of natural justice. (Lathrop vs. Stedman, 42 Conn., 583; Snydam vs. Moore, 8 Barb., 362; Olive, Lee & Co.'s Bank, 27 N. Y., 9; Hyatt vs. Whipple, 37 Barb., 595; Commonwealth vs. Fayette R. R. Co., 55 Pa., 452; Bangor vs. Smith, 47 Me., 34; West Wisconsin R. R. Co. vs. Supervisors, 35 Wis., 257.)

By a provision, then, in the defendant's charter the right to repeal the same, and necessarily the right to modify, for the greater included the less, was by necessary legal implication reserved, and the exercise of this reserved power by the convention of 1868 divested no vested right and impaired the obligation of no contract. True, the gen-
71 eral law in existence at the time of the granting of the charter relied on, while reserving the right to repeal whenever deemed convenient for the public interest, provided, also, that when the act of incorporation imported a contract upon the faith of which individuals had engaged their property or advanced money, that the repeal or modification could only be made by providing for a reimbursement of the money actually advanced.

This restriction upon the reserved power, however, has no application to the case before us, because the property now claimed as exempt was acquired by gratuitous donation by the corporation after the adoption of the constitution of 1868, and consequently after the repeal of so much of their charter as exempted from taxation their property not embraced within the limits of exemption allowed by that constitution. When a case of prior-acquired property presents itself it will be time enough to express our opinion thereon.

72 These views dispose of the matter at issue and fix beyond peradventure the liability of the property to the taxation claimed. We have not considered the arguments of expediency which have been so strongly pressed upon our attention. Our duty is to enforce the constitution and apply the law as we find it.

The judgment is affirmed.

MARR, J.—I do not concur in the opinion and decree in this case, and reserve the right to file hereafter my dissenting opinion should I think proper to do so.

Concurring opinion.

MARR, J.—Since the decree was pronounced in this case, before and after the application for rehearing, I examined the grounds of my dissent much more carefully than I had been able to do previously. The result is my conviction that the decree as rendered is correct. I concurred in the refusal to grant a rehearing, and desire now to express my concurrence in the decree.

73 *Petition for rehearing.—Filed 13th March*, 1879.

CITY OF NEW ORLEANS
vs.
ST. ANNA'S ASYLUM FOR, ETC. } No. 7124.

To the honorable the supreme court of Louisiana:

The petition of the defendant in the above-entitled case respectfully prays for *for* a rehearing in this case on the following grounds, viz:

1. The point on which the case was decided by the court was not raised or argued by counsel.

2. The decision of the supreme court of the State in the case of Montpelier Academy vs. George, 14 L. R. (wherein article 438 of the civil code was considered), not having been overruled at the time the defendant's act of incorporation was passed, makes a part of the act; and this is the case especially as both the constitutions of 1845 and 1852 were passed subsequent to the civil code of 1825, by men who were fully aware of the decisions. Nevertheless, there was an acquiescence in
74 the law as settled, and those constitutions declared what the supreme court had declared, that the State could not impair the obligation of a contract. The defendant's act of incorporation was passed the next year after the constitution of 1852 was passed, and article 118 of the constitution of 1868 impairs the contract with defendant, and violates sec. 10 of art. 1 of the Constitution of the United States.

3. The importance of the principle enunciated in the decision in this case cannot be overestimated, as it places at the mercy of the legislature every corporation of the State. If St. Anna's Asylum is subject to have her franchises taken from her without making compensation, by an act operating in futuro, as the constitution of 1868 is said to do, then the same thing may be done with any insurance, railroad, charitable, banking, or other company. It might be declared by the legislature that the banks should discount only such and such a paper,
75 or at only such and such a rate per cent., and such subsequent compulsory discount or diminished rate of future interest would not entitle the company to indemnity.

The legislature might declare that hereafter no insurance company should receive more than half the present rates of premium for insurance, and the company would be without indemnity.

But it seems to counsel that the franchises of the asylum are protected as well as its property. (3 Kent, 483.)

Rights are often more valuable than things which such rights constantly procure. No indemnity is made or offered defendant for the loss of its franchises.

In the instance of defendant the thing of value granted by the State was the right to acquire property free from taxation. The State gained the application of the revenues of the property so to be acquired to the support of the indigent and helpless, and a quasi control of the property through the mayor.

76 The value of the right to acquire property free from taxation was exactly the sum of money which, put out at interest, would produce the amount of taxes levied.

If, for instance, it were enacted that no bank should hereafter receive more than four per cent. instead of eight, now allowed, the loss in the franchise to the bank (should it continue business) be just one-half of the capital invested in bank. The value of a railroad, well equipped,

would not be what it would bring without the right to run it; the value would consist in the time its charter had to run and the right to collect freight and fare.

4. The cases cited by the court seem to be where the express right to amend or alter a charter at pleasure of the legislature has been reserved. We do not find any case where it has been held that a mere right to repeal a charter implies the right to amend and alter, and it seems to us, from the standpoint we hold as counsel, that the
77 ruling of the court in this respect impairs defendant's rights under the Constitution of the United States, and the point ought to be presented to the court on the application for a rehearing.

Wherefore the said appellant, the St. Anna's Asylum for Destitute Females and Helpless Children of all Religious Denominations, prays that the judgment rendered by this honorable court in this case be set aside, and that there be judgment for defendant, and for general relief.

(Signed) By MERRICK, RACE & FOSTER,
For Appellant.

Agreed statement of facts to perfect record of evidence, etc.—Filed 16th January, 1879.

CITY OF NEW ORLEANS, *vs.* ST. ANNA'S ASYLUM. } No. 7124.

Whereas it is the desire of counsel to place clearly before this court the case as it was argued and stated in the lower court;

And whereas the plaintiff contended that under article 118
78 of the constitution of Louisiana of 1868, and the acts of the legislature of 1872, No. 42, p. 105, sec. 2, acts of 1870, ex. sess., No. 7, p. 38, sec. 15, and the ordinances of the city council on file in this case (all of which are more at large, and explained in the plaintiff's briefs on file, one of which is annexed to and made a part of this agreement), with the assessments of taxes thereunder, entitle the plaintiff to recover the tax on the fire-proof cotton-press described in the tax-bill and answer on file, amounting to $1,350, notwithstanding the exemption claimed by defendant, and mentioned in the defendant's act of incorporation, as shown by section 6 of the act of the Louisiana legislature of 1853, No. 253, pp. 228 to 231, approved April 29th, 1853, and the act of the same legislature of the year 1836, p. 135, which acts are to be used and quoted as if copied at length in this record; and whereas the defendant contends that said section 118 of said constitution of
79 1868, said subsequent acts of the legislature of Louisiana, and ordinances of the city of New Orleans, so far as they deprive this defendant from exemption from taxation, State, parish, or city, mentioned in and guaranteed by defendant's act of incorporation, are violative of section ten and article one of the Constitution of the United States, and impair the obligation of the contract with the State contained in said act of incorporation, and are each and every one of them unconstitutional and void:

Now, therefore, it is admitted (as was done in the lower court) that the defendant acquired said cotton-press mentioned in the tax-bill and answer filed by defendant, after 1874, by device, bequest, and legacy from Dr. W. N. Mercer, and that they were the owners of the same when said assessment of $1,350 of city taxes was made by the city. That no inmates of the asylum are kept upon the premises, and that the reve-

nues of the cotton-press on which said assessment is made are
80 applied to the keeping and maintaining the objects of charity mentioned in the defendant's act of incorporation, viz, to the support and maintenance and relief of destitute females and helpless children of all religious denominations, as intended by the charter and that said asylum is, and has been since its organization, in active and efficient operation (as shown by the evidence) in the city of New Orleans; and it is further agreed that nothing herein shall be construed to prevent the plaintiff from citing and having the benefit of any laws and ordinances beyond those enumerated above, or to confine said plaintiff to the issues mentioned above, subject to the same defence as herein set up.

(Signed) SAM'L P. BLANC,
Ass't City Att'y.

(Signed) MERRICK, RACE & FOSTER,
For Defendants.

Plaintiff's brief attached to and forming part of the foregoing agreement.

81 CITY OF NEW ORLEANS, APPELLEE, *vs.* ST. ANNA'S ASYLUM, APPELLANT, ETC. } Supreme court, No. 7124.

Appeal from the third district court, for the parish of Orleans. No. 890.

BRIEF FOR CITY OF NEW ORLEANS.

The suit is brought in the usual and summary manner of city tax claims, and is a demand for the city tax of 1876, amounting to $1,350, and is levied on cotton-press property.

Defendant filed an answer alleging—

That the tax claimed is levied on "defendant's cotton-press," in a certain square described, but that defendant does not owe it, for this:

1st. Because defendant is a charitable institution, and that all its property is constantly appropriated to the payment of its expenses.

2d. That its property is exempt from taxation under section 6 of
82 act of incorporation. (Acts 1853, p. 231, and acts 1836, p. 135.)

3d. That this exemption constitutes a contract which can only be violated in opposition to requirements of Constitution of United States, sec. 10, art. 1.

Judgment was given for plaintiff, and defendant appealed.

THE EVIDENCE.—The only property assessed is described as square 32, bounded by Robin, Peters, Race, and Front, measuring 345 feet by 232 feet, and assessed at $90,000. This property is a cotton-press, leased to John T. Moore, and used by him as a press. It is not occupied for any of the purposes of an asylum or charitable institution, and came into the possession and ownership of the asylum long after its incorporation, in 1853. The questions at issue are presented in the three grounds of defence set out above, and the whole resolve themselves into one defence, viz, that the property taxed is exempt from taxation.

83 First. Defendant claims exemption in the first place for all its property as being that of a charitable institution.

Article 118 of the constitution authorizes the exemption of "property

actually used for charitable purposes," and, pursuant to the power there given, the legislature had, up to the time the tax sued upon fell due, allowed this immunity on "all charitable institutions for the relief of indigent and afflicted persons, and the lots appurtenant thereto and therewith, and all their furniture and equipments, so long as the same shall be used for that purpose only." (Acts 1871, No. 42, p. 105, sec. 2; acts 1870, ex. sess., No. 7, p. 38, sec. 15.)

Article 118 of the constitution has been several times interpreted to mean that no other than the actual asylum buildings, the edifices used and occupied as the asylum, can be exempted by the legislature from taxation. The acts of the legislature of 1870 and 1871 specifying what shall be exempt, are in conformity with the article of the constitution.

84 Where property itself is not actually used for charitable purposes the legislature has no power to exempt, for besides the limitation contained in the sentence quoted from art. 118, another portion of the same article emphatically directs that "all property shall be taxed," etc.

The inquiry, therefore, in every case of claimed exemption, be it by special or general legislation, must be: Is the property actually used for charitable purposes? By actually used we are to understand the direct and distinct use of the property itself, not the indirect use of it, as by the application of rents derived from the property to benevolent ends. The obvious intent is to secure points or places where the first virtues might find consecrated homes, to afford an asylum for the orphan, shelter for the friendless, hospitals for the indigent sick, and generally to encourage the appropriation and actual use of lands and buildings for the noble acts of charity.

85 The true and only way of effecting the object of the article is for the charitably-inclined association itself to occupy and use its own property for its benevolent purposes, and not, as defendant holds, to be used by others for traffic, and then to apply the revenues to charitable purposes. Such an interpretation of the constitution is both forced and dangerous; it is forced, because the property is not, in such cases, actually or at all used for charitable purposes, although its revenues, the income of the society, is devoted to works of benevolence. Land is one species of taxable property, and income is another. (Acts 1870, act 7, extra session, p. 37, sec. 14.)

The use of the income for a certain object is not the actual use of land for the same purpose. But this is no new question. A similar discussion arose before this honorable court in the case of City of New Orleans vs. The New Orleans Mechanic Society, 27 An., 436.

86 The city taxed the institute's property during the time of its occupation by the legislature, and whilst it was not actually used by the society. The defense was then made which is made here, that application of the revenue to charitable purposes was such a use of the property as exempted it from taxation. But your honors held otherwise, saying: "That the words of the law show it to be but a conditional exemption, and in order to claim it the society must use its building, the Mechanic's Institute, for its purposes of charity; the moment they fail to occupy it to that end it ceases to be exempt; that by law the right subsists so long as actually used for charitable purposes." 27 An., (436.)

The point also arose in the case of New Orleans vs. The Congregation of the Eispersed of Judah, 15 An. 390, wherein it was held: "Under the provisions of this law the city of New Orleans can tax certain property belonging to charitable associations; but there is a distinction to be

kept in view. The property which is in use for the purpose of
87 exercising the charitable purposes of the institution, as for instance the asylum, is exempt from taxation; whilst other property belonging to the association yielding revenue to its coffers have not the privilege or benefit of this exemption."

Again, in the case of the City of New Orleans vs. St. Patrick's Hall Association, 28 An., 512, where the property or hall of the association, used in part by the charitable society, and all of which property was exempted in the most express terms by the legislature (acts 1874), and by a city ordinance, it was held: "The property which is occupied for the execution of the charitable purposes of the institution may be exempted, but other property belonging to the association which is rented for stores, ball-rooms, or theatres cannot be exempted." There can be no doubt that under the constitution of 1868 nothing but the property actually and directly used—that is, the asylum building—can be entitled to immunity from taxation.

But if I understand the defense, it is contended that the acts
88 of 1836 and 1853, pleaded by defendant, having been laws adopted under a former constitution, do authorize the exemption claimed. This I deny, because the language of the article under which exemption is claimed does not refer to property such as that taxed herein, acquired since the passage of the act of incorporation of 1853, and because the law relied on does not permit any greater immunity than that which could now be permitted a charitable institution. These two answers to that position of defendant I maintain as follows:

II. First. The exemption is claimed on the ground that all property of the defendant was exempted by its act of incorporation. (Act 1853, No. 253, p. 231, sec. 6.) That section reads: "That said corporation shall enjoy the same exemption from taxation as was enacted in favor of the Orphan Boys' Asylum," etc.

The enactment referred to is found in acts 1836, p. 135, and
89 reads: "That from and after the passage of this act all the property, real and personal, belonging to the Orphan Boys' Asylum of New Orleans be, and the same is hereby, exempted from taxation, either by the State, parish, or city in which it is situated, any law to the contrary notwithstanding."

Assuming that this exemption ever was in force, and that it is so now, it is, however, clear that the immunity could only be claimed for property owned by the asylum at the time of its incorporation in 1853; the law exempted only the property "belonging to the" asylum, not that which will be purchased hereafter, or which will in the future belong to defendant. One inquiring at the time the act passed, in 1853, "What has been exempted for the asylum?" would have received this answer: "The property belonging to it." And the answer to the further question, "What is that property?" would not have enumerated the property herein taxed, for it was not then owned by defendant.

Second. The next view to be taken of the law permitting an
90 exemption of defendant's property, and which allows effect to it, is well supported by authority. This is, that though the law is general in its terms, it never did have, nor was it ever intended that it should have, any other operation than to exempt the property actually used for the asylum.

Says Mr. Burroughs: "An exemption, in general terms, of all the property of a college or literary institution extends only to the property actually used by the institution for its legitimate purposes. Sometimes the exemption is in express terms of such property only as is used

for literary purposes, but the same rule has been applied whether the terms be express or general" (Taxation, p. 134). (Cincinnati College vs. State, 19 Ohio, 110; Wyman vs. St. Louis, 17 Mo. 335; Detroit Young Men's Society vs. Mazer, 3 Mich., 172; State vs. Ross, 4 Zabr. 497; State vs. Elizabeth, id., 103.)

"The use must be direct and exclusive. (Burroughs, Tax., 134; St. Mary's College vs. Crowl, 10 Kansas. In the case where the char-
91 ter of the Elizabeth Library Association "exempted it from the payment of taxes on its property," it was held that where a portion of the association's library building was rented out it was liable to taxation thereon. (Burroughs, Taxation, p. 134.)

Yet the language of the exemption was as general in that case as in the one at bar.

III. Finally, it is maintained, in the words of the court, in the case of City of New Orleans vs. Bank of Lafayette, 27 An., 376, that "any law which is in conflict with that article (118), whether passed before or after the adoption of the constitution (of 1868), is stricken with nullity thereby unless the law created a contract with the party whose property is exempted before the adoption of the constitution."

If the acts relied on by defendant did create any contract, it has been shown that its terms restricted that contract to the property actually and directly used by defendant as an asylum. But there never was a contract.

92 An exemption from taxation is in derogation of common right and in conflict with the great principle of uniformity; they are never implied or inferred. The right can only be claimed under the clearest laws, and a doubt is to be interpreted against the corporation. (Blackwell, Tax Titles, p. 409, 410, and authorities quoted in note.)

Exemptions are mere privileges suspensive of the sovereign right of taxation, and may generally be recalled at any time. (Cooley, Const. Lim., 383, 2d ed.; People vs. Roper, 35 N. Y., 629; Christ Church vs. Philadelphia, 24 How., 300; Ford vs. Litchfield, 36 Conn., 116.) To establish a contract there must have been a consideration, and the intention to do away the right of taxation in perpetuity must be beyond all question. (Article Am. Law Review, No. 1, vol. XIII, p. 26.)

In the acts relied on neither consideration nor the intent to sell or dispose of the sovereign power of taxation appears. The ele-
93 ments and language of contracts are all wanting.

Respectfully submitted.

(Signed) SAM'L P. BLANC,
Assistant City Attorney.

Rehearing refused.—Extract from the minutes, Monday, March 24, 1879.

The court was duly opened pursuant to adjournment. Present their honors Thomas C. Manning, chief justice, and Robert H. Marr, Alcibiade De Blanc, William B. Spencer, Edward D. White, associate justices.

His honor the chief justice pronounced the judgment and decree of the court in the following cases:

* * * * * * *

NEW ORLEANS
vs.
ST. ANNA'S ASYLUM. } No. 7124.

It is ordered that the rehearing applied for in this case is refused.

Copy of resolution of asylum.—Filed March 27th, 1879.

94 ST. ANNA'S ASYLUM, PLAINTIFF IN error,
vs.
THE CITY OF NEW ORLEANS, DEFENDANT IN error. } No. 7124. New Orleans, March 13th, 1879.

Resolved, That the propriety of taking a writ of error from the decision of the supreme court of Louisiana to the United States Supreme Court be left to the judgment of the counsel, Judge E. T. Merrick, and in the event he advises such a writ of error to be taken that the president of this board, Mrs. James Clark, be authorized to sign the bond for a writ of error, with supersedeas, on behalf of this asylum.

I certify foregoing to be a true copy from the minutes of the meeting of the board of St. Anna's Asylum.

[SEAL.] (Signed) CAROLINE E. MERRICK,
Secretary.

Petition for allowance of writ of error.—Filed March 27th, 1879.

Supreme court.

95 ST. ANNA'S ASYLUM, PLAINTIFF IN error,
vs.
THE CITY OF NEW ORLEANS, DEFENDANT in error. } No. 7124.

To the honorable T. C. Manning, chief justice of the supreme court of the State of Louisiana:

The St. Anna's Asylum for the Relief of Destitute Females and Helpless Children of all Religious Denominations, domiciled in the city of New Orleans and parish of Orleans, in said State, respectfully represents that recently the honorable the supreme court of the State of Louisiana has rendered a final judgment in the last resort against petitioner, and in favor of the said City of New Orleans, for the sum of thirteen hundred and fifty dollars, besides interest, costs, &c., for taxes, and that on the trial of said case before the said supreme court of the State of Louisiana it was contended on behalf of the said city that article
96 118 of the constitution of the State of Louisiana, which is in these words, viz: "Taxation shall be equal and uniform throughout the State. All property shall be taxed in proportion to its value, to be ascertained as directed by law. The general assembly shall have power to exempt from taxation property actually used for church, school, or charitable purposes. The general assembly may levy an income tax upon all persons pursuing any occupation, trade, or calling, and all such persons shall obtain a license, as provided by law. All tax or income shall be pro rata on the amount of income or business. And all deeds of sale made, or that may be made, by collectors of taxes shall be re-

ceived by courts in evidence as prima facie valid sales. The general assembly shall levy a poll-tax on all male inhabitants of this State over twenty-one years old, for school and charitable purposes, which tax shall never exceed one dollar and fifty cents per annum," and
97 certain statutes thereunder and by virtue thereof, subjected the property of petitioner to taxation, and made petitioner liable to the payment of said taxes, interest, and costs, and the defendant, your petitioner, contended that said article of the constitution impaired the obligation of the contract contained in the act of the legislature of the State of Louisiana, approved April 29th, 1853, incorporating petitioner into a body politic and exempting its property from taxation, and the validity of said article of said constitution of said State of Louisiana was drawn in question on the ground of its being repugnant to section ten of article one of the Constitution of the United States, and the decision of the said supreme court of the State of Lonisiana was in favor of the validity of article 118 of said State constitution.

And petitioner further shows that it feels itself aggrieved by said decision, and is desirous of taking a writ of error, with a super-
98 sedeas, from said final judgment, and tenders its bond, with security for the same.

Wherefore petitioner prays that your honor will allow a writ of error from said decree to the Supreme Court of the United States, and will approve the supersedeas bond and sign the citations in error, and for general relief.

(Signed) By E. T. MERRICK,
Attorney for Petitioner.

Order allowing writ of error.

The foregoing petition being considered, it is ordered that a writ of error, with a supersedeas, be allowed petitioner on giving bond, with good security, conditioned according to law, in the sum of twenty-five hundred dollars.

March 27th, A. D. 1879.

[SEAL.] (Signed) TH. C. MANNING,
Chief Justice of Supreme Court of Louisiana.

Bond for writ of error.—Filed 27th March, 1879.

99 Know all men by these presents that we, the St. Anna's Asylum for the Relief of Destitute Females and Helpless Children of all Religious Denominations, as principal, and Thomas A. Adams and Sam'l H. Kennedy, of New Orleans, La., as sureties, are held and firmly bound unto the City of New Orleans, in its corporate capacity, in the full and just sum of twenty-five hundred dollars, to be paid to the said City of New Orleans, certain attorney, executors, administrators, or assigns, to which payment well and truly to be made we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents. Sealed with our seal and dated this 27th day of March, in the year of our Lord one thousand eight hundred and seventy-nine.

Whereas lately, in the supreme court of the State of Louisiana, holden at New Orleans, State of Louisiana, on an appeal taken to said supreme court, wherein the said City of New Orleans was plaintiff and the St. Anna's Asylum for the Relief of Destitute Females and Helpless
100 Children of all Religious Denominations was defendant, a final

judgment was rendered against the said defendant, and the said St. Anna's Asylum for the Relief of Destitute Females and Helpless Children of all Religious Denominations having obtained a writ of error, and filed a copy thereof in the clerk's office of the said supreme court, to reverse the judgment in the aforesaid suit, and a citation directed to the said City of New Orleans citing and admonishing the said city to be and appear at a Supreme Court of the United States to be holden at Washington the second Monday of October next:

Now, the condition of the above obligation is such that if the said St. Anna's Asylum for the Relief of Destitute Females and Helpless Children of all Religious Denominations shall prosecute its writ to effect and answer all damages and costs if it fail to make its plea good, then the above obligation to be void, else to remain in full force and virtue.

[SEAL.] (Signed) ST. ANNA'S ASYLUM, &c.,
By MRS. JAMES CLARKE, *Pres'd't.* [L. S.]
(Signed) THOS. A. ADAMS. [L. S.]

101 (Signed) SAM'L H. KENNEDY. [L. S.[

Sealed and delivered in the presence of—
(Signed) E. T. MERRICK,
As to the Sureties.

The foregoing and within bond is approved.
March 27th, 1879.
(Signed) TH. C. MANNING,
Chief Justice.

Writ of error lodged in clerk's office, &c.—Filed March 27th, 1879.

ST. ANNA'S ASYLUM, &c., PLAINTIFF IN ERROR,
vs.
THE CITY OF NEW ORLEANS, DEFENDANT IN error.

UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the chief and associate justices of the supreme court of the State of Louisiana, greeting:

Because, in the record and proceedings, as also in the rendition of the judgment, of a plea which is in the said supreme court before you, or some of you, being the highest court of law and equity of said
102 State in which a decision could be had in the said suit, between the St. Anna's Asylum for the Relief of Destitute Females and Helpless Children of all Religious Denominations, plaintiff in error, and the City of New Orleans, defendant in error, wherein was drawn in question the validity of a statute of the said State on the ground of its being repugnant to the Constitution of the United States, and the decision was in favor of such its validity, a manifest error hath happened to the great damage of the said St. Anna's Asylum for the Relief of Destitute Females and Helpless Children of all Religious Denominations, as by its complaint appears: We, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the

record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October next, in the said Supreme Court to be then and there held,
103 that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the honorable Morrison R. Waite, Chief Justice of the said Supreme Court of the United States, this 27th day of March, in the year of our Lord one thousand eight hundred and seventy-nine.

[SEAL.] (Signed) F. A. WOOLFLEY,
Clerk of the United States Circuit Court
for the District of Louisiana.

104 UNITED STATES OF AMERICA,
State of Louisiana:

Supreme court of the State of Louisiana.

I, Alfred Roman, clerk of the supreme court of the State of Louisiana, holding sessions at the city of New Orleans, do hereby certify that the foregoing 103 pages contain a full, true, and complete copy of the transcript of the proceedings had in the third district court for the parish of Orleans in a certain suit wherein the City of New Orleans was plaintiff and St. Anna's Asylum, etc., was defendant, and also of all the proceedings had in this supreme court on the appeal taken by said defendant, which appeal is now on the files thereof under No. 7124.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at the city of New Orleans, this fourth day of June, anno Domini one thousand eight hundred and seventy-nine, and in the one hundred and third year of the Independence of the United States of America.

[SEAL.] ALF'D ROMAN, *Clerk.*

105 UNITED STATES OF AMERICA,
State of Louisiana:

Supreme court of the State of Louisiana.

I, Thomas Courtland Manning, chief justice of the supreme court of the State of Louisiana, do hereby certify that Alfred Roman is clerk of the supreme court of the State of Louisiana, holding sessions at the city of New Orleans; that the signature of Alfred Roman to the within certificate is in the proper handwriting of him, the said clerk; that said certificate is in due form of law; and that full faith and credit are due to all of his official acts as such.

In testimony whereof I have hereunto set my hand and seal, at Monroe, this fifth day of June, in the year of our Lord one thousand eight hundred and seventy-nine.

[SEAL.] TH. C. MANNING,
Chief Justice.

106 Supreme court of the State of Louisiana.

I, Alfred Roman, clerk of the supreme court of the State of Louisiana, holding sessions at the city of New Orleans, do hereby certify that

the honorable Thomas Courtland Manning is, and was at the time of signing the foregoing document, chief justice and presiding judge of our supreme court, and that the signature affixed to the same is in the proper handwriting of him, the said judge.

In faith whereof I have hereunto set my hand and affixed the seal of this honorable court, at the city of New Orleans, this the seventh day of June, anno Domini 1879.

[SEAL.] ALF'D ROMAN, *Clerk.*

To the honorable T. C. Manning, chief justice of the supreme court of the State of Louisiana:

107 The St. Anna's Asylum for the Relief of Destitute Females and Helpless Children of all Religious Denominations, domiciled in the city of New Orleans and parish of Orleans, in said State, respectfully represents that recently the honorable the supreme court of the State of Louisiana has rendered a final judgment in the last resort against petitioner, and in favor of the said City of New Orleans, for the sum of thirteen hundred and fifty dollars, besides interest, costs, &c., for taxes, and that on the trial of said case before the said supreme court of the State of Louisiana it was contended on behalf of the said city that article 118 of the constitution of the State of Louisiana, which is in these words, viz: "Taxation shall be equal and uniform throughout the State. All property shall be taxed in proportion to its value, to be ascertained as directed by law. The general assembly shall have power to exempt from taxation property actually used for church, school, or charitable purposes. The general assembly may levy an income tax upon all

108 persons pursuing any occupation, trade, or calling, and all such persons shall obtain a license as provided by law. All tax or income shall be pro rata on the amount of income or business. And all deeds of sale made, or that may be made, by collectors of taxes shall be received by courts in evidence as prima facie valid sales. The general assembly shall levy a poll tax on all male inhabitants of this State over twenty-one years old, for school and charitable purposes, which tax shall never exceed one dollar and fifty cents per annum," and certain statutes there-

E. T. M. under and by virtue thereof, subjected the property of petitioner to taxation, and made petitioner liable to the payment of said taxes, interest, and costs, and the defendant, your petitioner, contended that said article of the constitution impaired the obligation of the contract contained in the act of the legislature of the State of Louisiana, approved April 29th, 1853, incorporating petitioner into a body politic, and exempting its property from taxation, and the validity of said article of said constitution of said State of Louisiana was drawn in question on the ground of its being repugnant to section ten of article one of the Constitution of the United States, and the decision of the

109 said supreme court of the State of Louisiana was in favor of the validity of article 118 of said State constitution.

And petitioner further shows that it feels itself aggrieved by said decision, and is desirous of taking a writ of error, with a supersedeas, from said final judgment, and tenders its bond, with security, for the same.

Wherefor' petitioner prays that your honor will allow a writ of error from said decree to the Supreme Court of the United States, and will approve the supersedeas bond and sign the citations in error, and for general relief.

By E. T. MERRICK,
Attorney for Petitioner.

110 (Indorsed:) 7124. Supreme court. St. Anna's Asylum, plaintiff in error, vs. The City of New Orleans, defendant in error. Petition for allowance of writ of error. Filed March 27th, 1879. Frank Wall, d'y clerk.

The foregoing petition being considered, it is ordered that a writ of error, with a supersedeas, be allowed petitioner on giving bond, with good security, conditioned according to law, in the sum of twenty-five hundred dollars.

March 27th, A. D., 1879.

[SEAL.] TH. C. MANNING,
Chief Justice of Supreme Court of Louisiana.

111 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the chief and associate justices of the supreme court of the State of Louisiana:

Because in the record and proceedings, as also in the rendition of a judgment, of a plea which is in the said supreme court, before you, or some of you, being the highest court of law and equity of said State in which a decision could be had in the said suit, between the St. Anna's Asylum for the Relief of Destitute Females and Helpless Children of all Religious Denominations, plaintiff in error, and the City of New Orleans, defendant in error, wherein was drawn in question the validity of a statute of the said State on the ground of its being repugnant to the Constitution of the United States, and the decision was in favor of such its validity, a manifest error hath happened to the great damage of the said St. Anna's Asylum for the Relief of Destitute Females and Helpless Children of all Religious Denominations as by its complaint appears, we being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October next, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Hon. Morrison R. Waite, Chief Justice of the said Supreme Court of the United States, this 27th day of March, in the year of our Lord one thousand eight hundred and seventy-nine.

[SEAL.] F. A. WOOLFLEY,
Clerk of the United States Circuit Court for the District of Louisiana.

(Indorsed:) Supreme Court. No. . St. Anna's Asylum, &c., plaintiff in error, versus The City of New Orleans, defendant in error. Writ of error. Filed March 27, 1879. Frank Wall, d'y cl'k.

112 THE UNITED STATES OF AMERICA,
Circuit Court of the United States,
District of Louisiana.

The President of the United States to the City of New Orleans, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at the city of Washington on the

second Monday of October next, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of Louisiana, at the city of New Orleans, in said State, wherein the St. Anna's Asylum for the Relief of Destitute Females and Helpless Children of all Religious Denominations is plaintiff and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in said writ of error mentioned should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable Thos. C. Manning, chief justice of the supreme court of the State of Louisiana, this 27 day of March, in the year of our Lord one thousand eight hundred and seventy-nine.

[SEAL.] TH. C. MANNING,
Chief Justice of La.

113 (Indorsed:) Supreme Court. No. . St. Anna's Asylum, &c., plaintiff in error, vs. The City of New Orleans, defendant in error. Citation.

Return.

I, Andrew H. Wilson, being first duly sworn on oath say that I this day delivered a duplicate of this citation to Isaac W. Patton, mayor of the city of New Orleans, at his office, in the City Hall, in said city, and I also delivered a triplicate original hereof to S. P. Blanc, the assistant city attorney of record in this case.

March 27th, 1879.

ANDREW H. WILSON.

Sworn to and subscribed before me this 28th March, A. D. 1879.

[SEAL.] ALF'D ROMAN,
Clerk Supreme Court of La.

Supreme court of La. Filed M'ch 28, 1879. Frank Wall, d'y clerk.

(Indorsement on cover:) No. 218. St. Anna's Asylum for the Relief of Destitute Females and Helpless Children of all Religious Denominations, plaintiff in error, vs. The City of New Orleans. Louisiana supreme court. Filed 28th July, 1879.

SUPREME COURT OF THE UNITED STATES

No. 218. Oct. T, 1881.

THE ST. ANNA'S ASYLUM, &c.,

PLAINTIFF IN ERROR,

vs.

THE CITY OF NEW ORLEANS.

Brief in reply for Plaintiff in Error.

E. T. MERRICK.
For Plaintiff in Error.

L. Graham & Son, Book and Job Printers, 127 Gravier st.

SUPREME COURT OF THE UNITED STATES

No. 218. Oct. T, 1881.

THE ST. ANNA'S ASYLUM, &c.,

PLAINTIFF IN ERROR,

vs.

THE CITY OF NEW ORLEANS.

Brief in reply for Plaintiff in Error.

OUR ORIGINAL BRIEF was prepared before the record was printed. It was under the expectation of the counsel for the Asylum to submit the case on briefs at the first term after the writ of error was taken. Hence the first brief, *as printed*, only refers to the marginal paging.

We are accused by defendant's counsel of making an attack upon the opinion of the Louisiana Supreme Court.

We trust it is not implied that such attack is made in a disrespectful manner. We confess we do not know how, to controvert the arguments of that able

Court without bringing to them in a respectful manner the ordinary tests of law and logic.

FIRST.

The defendant's counsel rely upon the cases of Tucker vs. Ferguson, 22 A., 575, and West Wisconsin R. R. vs. Supervisors, 93 U. S. R., 595, as in some manner answering our original argument and brief.

It does not seem to us that those cases are applicable to the case at bar, for the very reason that the charter of the St. Anna's Asylum does actually contain the contract which did not exist in those cases. But it seems the Supreme Court of Louisiana, took a different view of the charter. After stating the exemption contained in our charter, the Court asked the question whether this exemption is a contract of such a nature as to exexempt the Asylum from future taxation. That Court thought it did not. If the charter of the Asylum does not contain a contract, then the Courts of the United States, State and National have been laboring under a great misapprehension from the decision of the Dartmouth College case to the present day. In none of the acts of incorporation is there a more explicit contract than in this. The donors and corporators asked, in the preamble, the Legislature *for greater security* to their donations. The Legislature expressly granted it in the terms which the Supreme Court has quoted. See p. 22, Margin 62.

The statute *promises in future* that the Asylum "*shall enjoy the same exemption* from taxation as the Orphan Boy's Asylum," and that is on all its property, real and personal, from city, parish or state taxation, "*any law to*

the contrary notwithstanding." What language can be stronger?

In the cases cited by the Supreme Court of Louisiana, from 15 Ann. 390, 27 Ann. 376 and 28 Ann. 512, depend as we understand them on the ordinary exemp-emption from taxation, by some general or special laws outside of the corporate acts. Such laws whether applicable to the corporations or private persons we admit may be repealed or modified.

But we understand our esteemed adversaries (in addition to the brief filed by them) to rely on the brief of Mr. Blanc in the record and on the argument of the Louisiana Supreme Court..

That Court seems in one part of the opinion to place this case in some manner on the ground that the enforcement of the Constitution of 1868, does not impair our rights because the property was given to us in 1874, after the adoption of the Constitution. Rec. p. 25. Margin 71 and 72.

This brings up the question whether the *franchises* of the corporation are protected by the contract with the State contained in the charter. We wish to add a few authorities to our original brief. The Supreme Court of Louisiana, therefore, on its own grounds seem to concede that if the Asylum had acquired the property by a bequest prior to the adoption of the Constitution of 1868, it might not have been subject to taxation.

The distinction drawn by the Supreme Court of Louisiana, if we comprehend it, to us seems over-refined. Why should the property already acquired be any less subject to taxation than the property which the

Legislature solemnly gave us by our charter the right to acquire free from taxation? The Legislature laid a restriction on the Asylum's right to sell without the concurrence of the Mayor, and declared that the proceeds of any sale must be re-invested in real estate. They obtain, on the faith of the charter, a large and commodious asylum, say worth $120,000, "under provisions which" the corporators "believe will be more satisfactory *in point of security* to persons friendly to the philanthropic object which they have in view" (Preamble, Rec., p. 15), which security was in exempting the future acquisitions from taxation, and now they propose to lessen every gift to the Asylum one-third by laying on it onerous taxes which diminish the gift one-third or one-half in value.

Is the right to acquire and hold property free from taxation of no value? In reference to the Fire Proof Cotton Press alone, *this right* was worth the day before Dr. Mercer died, and the property vested in the Asylum, not less than *twenty seven thousand dollars*: For no investment of a less sum than that under any circumstances could produce $2700 annually State and city taxes sought to be extorted from the scant revenues of the Asylum. Twenty seven hundred dollars was the equivalent of that much food and clothing to the inmates annually.

In the case of private persons this right to acquire property is not only considered valuable, but it is inalienable. The man of full age who is incapable of acquiring property is *civiliter mortuus*. A lunatic can acquire through his curator.

It is difficult to see how a charitable corporation ex-

pected to maintain at least a hundred and thirty or forty destitute persons, constantly could be of any service if incapacitated from holding and acquiring a habitation to shelter and an income to maintain the recipients of the charity. If the simple right to acquire is valuable, then the right to acquire free from taxation is more so.

The question whether the franchises of a corporation can be taxed when presented to the State Court *on the other side*, seems to occasion it much less trouble. It finds that the *franchises* of a corporation *do have value* and are subject to taxation. In 31 Ann. 476 in the case of the New Orleans City Gas Company vs. Board of Assessors, that Court said: "In plain words the plaintiff "considered the exclusive *right to make and vend gas* for "fifty years, of which it was about to be deprived, was "worth a million and a quarter of its stock and it pur- "chased that monopoly privilege and *franchise* with that "amount of stock. The company gave more than that "for this *franchise*, for by the consolidation the hold- "ers of the new stock owned the tangible property of "the old company proportionately. *The franchise then* "was *property* and it was a value. Nothing is better "settled, says Burroughs, than that the franchise "of a private corporation * * * * is property "of the most valuable kind *as it cannot be taken for* "*public use even*, without compensation. Taxation, "167, Attorney General *vs.* Bank of Charlotte, 4 "Jones Eq. (N. C.) 287."

If it is "property" and "valuable property" when the State has an opportunity to tax it, why is it not property and valuable property when potentially it

can provide bread, clothing and shelter for the destitute and helpless and it is free from taxation?

The franchises of a corporation have not only been declared property by the Supreme Court of Louisiana, but we understand the decisions of this High Court to be quite as emphatic even when the question was one concerning the violation of the obligation of a contract made with a corporation.

The point seems to us fully decided in the case of the Planters' Bank *vs.* Sharpe, 6 Howard, 301. We copy the head note to save space:

"When a bank was chartered with power '*to have, possess, receive, retain and enjoy to themselves and their successors lands, rents, tenements, hereditaments, goods, chattels and effects of what kind soever, nature and quality, and the same to grant, devise, alien or dispose of for the good of the bank,*' and also 'to receive money on deposit and pay away the same free of expense, discount bills of exchange and notes, and to make loans,' etc., and in the course of business under this charter the bank discounted and held promissory notes, and then the Legislature of the State passed a law declaring that '*it shall not be lawful for any bank in the State to transfer by indorsement or otherwise any note, bill receivable or other evidence of debt*; and if it shall appear in evidence upon the trial of any action upon any such note, bill receivable or other evidence of debt, that the *same was transferred, the same shall abate* upon the plea of the defendant.' This statute conflicts with the Constitution of the United States, and is void."

Now please compare an extract or two from our charter. It gives the corporation power and declares it

"*capable of taking, receiving, purchasing, possessing and enjoying all kinds of property whatever, real or personal, by gift, grant, sale, bequest, exchange or by any other mode of conveyance or transfer whatever*, and the same may sell, convey or dispose of under the restrictions hereinafter provided, *and they shall administer the same for the furtherance of the object of this incorporation*, and in accordance with *the conditions of* this charter," etc. Sec. 1, Record, p. 15.

Then in another section follows these conditions: "Provided always that no alienation of immovable property or stocks owned by the corporation shall have *any legal* validity unless accompanied by a written certificate of approval of such alienation, by the Mayor of the City of New Orleans," &c, and provided that all proceeds of sale of any immovable property shall be by said board re-invested as speedily as possible in other immovable property. Rec. p. 17, sec. 4.

Now as a further inducement and "point of security," the State by the 6th section covenanted, as we have just seen that the Asylum *should enjoy immunity* from taxation as to all property, all laws to the contrary notwithstanding. 31 Ann., 293.

It seems to us that the right to acquire and use property for the Asylum free from taxation is covered by the case of the Planters' Bank vs. Sharp, 6 Howard, 301, just cited.

In the case of the Wilmington Railroad vs. Reed, 13 Wallace, 268, this Court has also said: "Nothing is better settled than that the *franchise* of a private corporation—which in its application to a railroad *is the privilege of running it and taking fare and freight*—is prop-

erty of the *most valuable kind*, as it cannot be taken for public use, even without compensation. It is true it is not the same sort of property as the rolling stock, road-bed and depot grounds, but it is equally with them covered by the general term the property of the company and therefore equally within the protection of the charter."

But perhaps this objection to our case is waived by the ground assumed in the close of the brief of defendant in error.

SECOND.

In our original brief we showed that the universal construction placed by all the courts of the State for forty years upon acts of incorporation implying contracts was that they were all protected by the Constitution of the United States from impairment, notwithstanding the Civil Code allowing a dissolution in certain cases. We further showed that the present case is the sole exception to all the decisions. *And that the same court* subsequently fell into line again and held that the Legislature could not impair a right of exemption granted a bank by an amendment to its charter by a subsequent constitution and legislation. Citizens' Bank *vs.* Bouny, 32 Ann., 239, cited in original brief. See also City *vs.* People's Bank, 32 Ann., 82.

It having been finally settled by the Supreme Court that the Civil Code gave no color to any pretense that the Legislature had reserved to itself under a covert phrase the right to amend and alter the charters of corporations, there was no reason to doubt the security against taxation wherever there was a guaranty against

the same in the acts of incorporation. See a'so City of New Orleans *vs.* Southern Bank, 11 Ann., 41; State of Louisiana *vs.* Same, 23 Ann. 271; City of New Orleans *vs.* People's Bank, 32 A., 83, 84. S e Gay *vs.* Davis, 1 Wood, R., 424, also our original brief from page 19 to 24, where the principal authorities on this point are collected.

On page 24 of our brief we show that the *Legislalature* of Louisiana held the same view of the law.

In reference to cases situated as ours is, this Court has said and iterated the following:

"The sound and true rule is that if the contract when made was valid by the laws of the State *as then expounded* by all departments of the government and administered in its courts of justice, its validity and obligation cannot be impaired by any subsequent *action of legislation or decision of its courts* altering the construction of the law." Ohio Life and Trust Co. *vs.* Debolt, 16 H., 432; Gelpcke *vs.* City of Dubuque, 1 Wal., 206; Mitchell *vs.* Lippincott, 2 Woods, R. 470.

THIRD.

We find this in the [redacted] brief for the city:

"The portions of the arguments on behalf of the plaintiff in error addressed to the feelings of the Court —such as the good done by the associatian, the praiseworthy action of the donors, the provision of the charter for the guarantee of proper management, etc., do not enter into the consideration of the questions of law presented and cannot be allowed to paralyze the vital functions of the government."

If more has been said in our brief about the money

expended by the donors in maintaining the objects of charity, which otherwise would be the duty of the State and city to maintain, it is because it seems to be denied by counsel and by the Louisiana Supreme Court on comparison of this case with the Citizens Bank case, that a valid consideration can consist in anything given in charity or as a gratuity. It seemed to be proper to show that money or property given to a charity was still money and property, and that it did not lose value thereby. The $200,000 given to the State to support its own helpless and destitute citizens, was as much a consideration for the contract that the corporation should enjoy such property exempt from taxation as it was in the Citizens' Bank case, where it was granted for a small consideration, say, in money.

The State places the mayor of New Orleans a custodian over the property, while the whole revenues thereof are devoted to the support of objects of charity which the State in 1853 thought it was its interest to foster and protect by the grant of the charter and a guaranty against taxation.

Instead of asking anything from the Court as counsel seems pleased to imagine on account of the institution being a benevolent one, we are alone solicitous to satisfy the Court that the State has made a contract with us as much as it did with the Citizens' Bank, and for a valuable consideration, though for other and perhaps better motives. This was perhaps unnecessary, for this Court has said, "There is no necessity of looking for a consideration for a legislative contract outside of the objects for which the corporation was created.

These objects were deemed by the legislature to be beneficial to the community, *and this benefit constitutes the consideration* for the contract, and no other is required to support it. This has been well settled as the doctrine of this Court on this subject since the case of Dartmouth College vs. Woodward, 8 Wal., 437.

In our first brief we cited the case of North Western University vs. The People of Illinois. It was not then published in the reports of Mr. Otto. It is in vol. 99, U. S. Rep. (and not vol. 98 as cited.) Page 318.

This case clearly covers the case at bar. See cases cited page 42 of our first brief. See also Humphrey vs. Peques, 16 Wal., 244. Gordon vs. Appeal Tax Court, 3 H., 146. Gray, Receiver, vs. Davis, Gov., 1 Woods, 424-8. Dodge vs. Woolsey, 18 Howard, 360. Brownsville vs. Cavazos, 100 U. S., 138.

FOURTH.

In addition to what we have said in our first brief on the effect of Art. 438, Civil Code of 1825 (p. 20-25), we desire to make this quotation from Curran vs. State of Arkansas, 15 H., 313.

"We do not consider, therefore, that the power of the State to repeal this charter enables the State to pass a law, impairing the obligations of its contracts." Curran vs. State of Arkansas, 15 H., 313.

FIFTH.

At the conclusion of defendant's brief, the counsel for the city corrects a misapprehension of the counsel for plaintiff, in error as to the grounds of the argument of the former, in the lower Court. The strong impression made

in the lower Court, outlasted the disavowal which had escaped our memory. See brief made part of argument of counsel, p. 30, margin 88, 89. We concede to our adversary the right to assume his own grounds of defence.

We understand him now to say that if the property had been acquired by the Asylum before the constitution of 1868, it would have become subject to taxation under that constitution.

We are glad to meet our adversary on this ground. We find great difficulty in grasping the distinction if any existed between this case and the case of the Citizens' Bank vs. Bouny Tax Collector, 32 Ann, 241, wherein the same Court acknowedged *to the fullest extent the inviolability of a clause in a charter*, or amendment thereto exempting for a consideration the property of a corporation from taxation. It occurred to us that the difference must consist, if at all, in the fact that the franchise could be invaded by the constitution of 1868, so that after acquired property might be subject to taxation. Because in the Citizens' Bank case just cited, it was declared by that Court without dissent, that "*the exemption became a vested right*, which the constitution of the United States forbids the State to violate or impair," notwithstanding the Civil Code of 1825, contained the same article 438 at the time the Citizens' bank charter was granted in 1833. If that article could authorize the Legislature to tax the St. Anna's Asylum, it could do the same office for the Citizens' Bank. There was no repealing clause of the Citizens' Bank Charter. It was only a contract. There was *also a contract* with the St. Anna's Asylum, but the

charter of the latter *did* contain *a repealing clause* in these words: "*Any law to the contrary notwithstanding.*" This repealing clause cannot add any strength to our case, because it was always the law, as we have shown, that if a charter implied a contract, it rested on the Constitution of the United States and could not be impaired. This is the only case in Louisiana where it has ever been pretended that the Legislature could *amend* or *modify* a charter. But to relieve the case, should the Court have any doubts on the subject, which we cannot think, we refer the Court to the repealing clause in the Act of 1836, cited in the brief annexed to and made a part of the agreed statement of facts raising the issue in the lower court. Rec., p. 30, margin 89.

It was also agreed that the Act of 1836 "need not be filed;" "that counsel shall have the right, before any court, to which this case may go, to read said act and submit it to the court for consideration from the printed statutes." Rec. p. 5, margin 15. See Statute in full, p. 12 of our first brief.

We feel satisfied that there is no just ground for excepting this case from the benefit of the hitherto well settled law of the State, and that the judgment of the lower court ought to be reversed and one rendered for the plaintiff in error.

All of which is respectfully submitted.

E. T. MERRICK.

For Plaintiff in Error.

UNITED STATES SUPREME COURT.

THE ST. ANNA'S ASYLUM, ETC., PLAINTIFF IN ERROR,

versus

THE CITY OF NEW ORLEANS, DEFENDANT IN ERROR.

BRIEF AND ASSIGNMENT OF ERRORS ON THE PART OF PLAINTIFF IN ERROR.

I. The suit is brought to collect $1350, city tax for the year 1876 on a cotton press.

The proceeding is under the special legislation of Louisiana as to taxation. An undelivered receipt of the tax collector stands in the place of a petition. Record, page 2. Print Rec. p. 1

The tax is claimed in virtue of the provisions of article 118 of the Constitution of 1868, bringing the property taxed, it is contended, within the class which that constitution subjects to taxation, and which is enforced by the laws and ordinances made in pursuance thereof. The acts of the Legislature are acts 1872, No. 42, page 105,

sec. 2; acts 1870, Extra Session, No 7, page 38, sec. 15, The ordinances are in the record. Record, pages 15 to 24.

The charter of the plaintiff in error was granted in 1853 by the Legislature, and it declared in substance that the corporation should "enjoy" exemption from *all* taxation, state, parish or city, on all its property, real and personal. The grant of exemption in the charter was absolute. The subsequent Constitution of 1868 invades the right.

The plaintiff in error resists the tax on the ground that its assessment violates the Constitution of the United States; and in its answer to the suit, after setting forth the charter, plaintiff in error says: "And the Louisiana Constitution of 1868 and all other and subsequent statutes of said State of Louisiana, authorizing the city of New Orleans to tax said property and tending to subject said property of this defendant to city taxes, and all city ordinances levying a tax upon the property of this defendant, and subjecting the same to assessment and to taxation, impair the obligation of defendant's said contract with the State, and violate section ten of article one of the Constitution of the United States; and said assessment of said tax is null and void." Record, page 5. fp. 2

It has been and is well understood between counsel, that the case is to be tried without regard to technicalities. see fp. 28 The question to be decided is, whether the defendant's cotton press, which was acquired by bequest from Dr. W. N. Mercer in 1874, and the revenues of which are all applied to the maintenance of the inmates of the

Asylum, was exempt from taxation under the charter. The testimony at the trial was badly taken down by the phonographer in the District Court. To supply the defects in the record, an agreed statement of the facts was filed in the Supreme Court of the State, on which the case was tried with the record. The statement of the facts will be found commencing at page 77 of the record instead of page 56, where it belongs. p. 27

The statement of facts also raises the question of *the constitutionality* of article 118 of the Constitution of 1868, and the said specific laws in execution of the same. It admits that the income of the press is applied to the objects of the charity, and that the Asylum proper has been and is in efficient operation as contemplated by the charter. It is also admitted that the fire-proof cotton press was acquired in 1874 by bequest, and that none of the inmates are kept there. There was in fact no other defence made than that the article 118 of the Constitution of 1868, and laws thereunder, impaired the obligation of the plaintiff in error's charter, and were repugnant to the Constitution of the United States. See Record, 77 to 80, and from 81 to 92, page 82.

The Asylum was large, and had from 100 to say 150 inmates. See Record, page 8–14. p. 3–5

The Supreme Court of Louisiana treats the question raised by the pleadings and stated in the agreed statement of facts, whether the St. Anna's Asylum is protected from the tax by the Constitution of the United States as the only question in the case. The petition for a rehearing,

which is a part of the pleadings, again raises the same question, and it is decided in favor of the State law and against the Constitution of the United States. Record, 73–77. See decree refusing the rehearing. Record, page 93. 2. 26, 32

There is therefore no question of the jurisdiction of this Court over the case as a constitutional question, nor of its power to decide the controversy.

I. Before assigning the errors of which we complain, we will copy the legislation on which the plaintiff in error relies, after giving a brief account of the origin and object of the institution.

After the disastrous epidemic of 1847, some benevolent ladies took upon themselves the relief of destitute widows and children, of which the city was full. They labored with great effect. Their work increased in magnitude, and in 1850 they adopted a private charter under the general law. Such a charter protected the corporators from liability as partners, but did not protect their property from taxation by the legislature. Dr. W. N. Mercer, having lost an only child and daughter named Anna, and knowing the noble purposes and charitable deeds of those ladies, conceived the purpose of perpetuating the name and virtues of his daughter, through an endowment of an ample asylum, which he was willing to make and place under the control of those ladies, whose merits and efficiency were well known.

Dr. Mercer was the owner, at the time the act was

passed, of a large amount of very productive Gas Light stock as well as real estate in New Orleans.

He was *not* willing to risk his donations upon the private charter by notarial act, for it did not secure the property against taxation under the act of 1847, and the company was prohibited from holding property over $300,000. Acts 1847, page 151–152. He meant to have *security* against taxation and against the use of his property for any other purpose than the charity intended. He was Henry Clay's friend and a man of influence, not only on account of his great benevolence, but from his social position and wealth. His residence on Canal street was as well known as Clay's statue, and his intentions toward the Asylum were not less known. He had no trouble in procuring the charter, and he took care that the instrument should explain its purposes, as the following recital from the preamble shows.

"Whereas, the persons hereinafter named, professors of the religious faith denominated protestant, associated under a charter being date the 22d day of April, 1850, framed under the act of the thirtieth of April, 1847, but are now desirous of extending their usefulness under a new title, and under provisions which they believe *will be more satisfactory in point of* SECURITY to persons friendly to the philanthropic object which they have in view." Record, page 39–40. printed record p. 15–16

We copy the act of the legislature in full, to show the "points of security" gained. One point was that the *real estate* and bank or other *stocks* were not to be sold

without the approval of the mayor of the city. Still another point of security was that the real estate was to be placed under protection of the advice of a committee of gentlemen, called the Real Estate Committee, whose advice was to be taken as to *investments of funds* as well as the management of the real estate. And another point was, it was to be exempt from taxation.

We have italicised the act, in order to call the attention of the Court to such portions as we think most important.

AN ACT

To incorporate the Saint Anna's Asylum for the relief of destitute females and helpless children of all religious denominations.

WHEREAS, it is proper that the security of a charter under suitable restrictions should be granted to persons belonging to any religious denomination who desire to associate themselves together according to their peculiar faith for purposes of benevolence; WHEREAS, the persons hereinafter named, professors of religious faith denominated Protestant, have been for some years past associated under a charter bearing date the twenty-second of April, one thousand eight hundred and fifty, framed under the act of the thirtieth of April, one thousand eight hundred and forty-seven, but are *now desirous of extending their usefulness under a new title and under provisions which they believe will be more satisfactory* IN POINT OF SE-

CURITY *to persons friendly to the philanthropic object which they have in view;* therefore,

SECTION 1. Be it enacted by the Senate and House of Representatives of Louisiana, in General Assembly convened, That all those persons who are now members of the said association and *such other* free white persons as may, in accordance with the provisions of this charter, be hereafter associated with them, *are hereby created a corporation* under the title of the "St. Anna's Asylum for the relief of Destitute Females and Helpless Children of all denominations," *and under that name shall have perpetual succession* AND SHALL BE CAPABLE OF *taking, receiving, purchasing, possessing, and enjoying all kinds of property whatever, real or personal, by gift, grant, sale, bequest, exchange, or by any other mode of conveyance or transfer whatsover*, and the same may sell, convey or dispose of under the restrictions hereinafter provided, *and they shall administer the same for the furtherance of the object of this incorporation*, and in accordance with *the conditions* of this charter: and they shall also be capable to sue and be sued, plead and be impleaded, in all courts and elsewhere, and to have a common seal. *The object of this Corporation is the charitable object designated in its title.*

SEC. 2. Be it further enacted, etc., Any free white person may become a member of this corporation for one year by paying into the treasury thereof the sum of *five dollars*, and may thereafter continue to be such member by the annual payment of the like sum; and any free white person may become a life member of this corpora-

tion by payment, at any one time, into the treasury the sum of *fifty dollars*. Every member shall be entitled to vote for directors.

SEC. 3. Be it further enacted, etc., The affairs of the corporation shall be managed by a Board of Directors, composed, during the first year, and until the ensuing election, of the following members:

Mrs. G. N. Stanton, wife of J. N. Stanton, president; Mrs. C. Charles, wife of Richard Charles, vice-president; Mrs. A. M. Caruthers, widow of M. Caruthers, treasurer; Mrs. W. J. Dewey, wife of W. J. Dewey, secretary; Mrs. C. Toby, widow of Thomas Toby, Mrs. J. Clarke, wife of J. L. Clarke, Mrs. S. W. Day, wife of J. W. Day, Mrs. M. Turner, wife of Mortimer Turner, Mrs. A. Jennings, wife of N. R. Jennings, Mrs. E. A. Bradford, wife of E A. Bradford, Mrs. A. J. Coffee, wife of A. J. Coffee, Mrs. M. Luzenberg, wife of Dr. Luzenberg, Mrs. E. Parmele, wife of Edward Parmele, Mrs. Q. L. Lonsdale, wife of H. T. Lonsdale, Mrs. A. Briggs, wife of Charles Briggs, Mrs. O. H. Turner, wife of S. A. Turner, Mrs. W. H. Cook, wife of W. H. Cook, Mrs. J. N. Lea, wife of J. N. Lea, Mrs. E. T. Giffen, wife of Adam Giffen, Mrs. E. D. Hyde, wife of E. D. Hyde, Mrs. J. A. Maybin, wife of J. A. Maybin, who shall continue in office until the second Monday in January, one thousand eight hundred and fifty-four; on which day a meeting of the members of the society shall be held at the Asylum between the hours of 10 A. M. and 2 P. M., when the said members shall elect,

by ballot, twenty female members to serve as directors for the ensuing year. A similar election shall take place on the second Monday of January in every following year.

But if, from any cause, an election of directors should fail to be made on that day, the Board of Directors of the previous year shall continue in office until their successors be elected. *The Directors* shall always be selected from the *various religious denominations;* provided, that in no case can there be elected so great a number of any one denomination as to give such denomination a majority of the whole Board for the time being. Nine directors shall constitute a quorum during the months of November, December, January, February, March and April and five during the residue of the year. The said Directors shall, within eight days after their election, appoint by ballot, from among their number, a President, a Vice President, a Treasurer and a Secretary.

SEC. 4. Be it further enacted, etc., That the said president and directors shall *superintend, manage and control, subject to the limitations* hereinafter provided, all the affairs and interests of this corporation during their term of office, and they may adopt such rules and by-laws for that purpose as they may deem necessary, and as may not be inconsistent with the object and terms of this charter, or with the constitution and laws of this State, or of the the United States. The said Board of Directors SHALL, IN THE NAME OF THIS CORPORATION, *purchase, take,*

accept and receive, by public act or otherwise, *all property, real or personal*, which shall be acquired by purchase, donation, "inter vivos" or mortis causa, or otherwise, *and the same shall hold and manage for the benefit of this corporation, subject to the stipulations of this charter and the lawful* condition of every such donation or legacy. *All acceptance* of immovable property, and *all alienations of immovable property and* STOCKS, shall be signed by the president and treasurer, after the declared will of a majority of the Board of Directors has been duly inscribed on the minutes of said corporation; PROVIDED *always*, that *no alienation* of the *immovable* property *or stocks* owned by this corporation shall be made, or *have any legal validity*, unless accompanied by a written certificate of approval of such alienation *by the mayor of the city of New Orleans*, setting forth that he has duly examined and considered such proposed alienation *and is satisfied* such alienation is for the advantage of said corporation. The said *certificate* shall always be *deposited* and *recorded* by a proper act in the office of a notary public. Provided, also, that all proceeds of *sale of any immovable* shall be by said Board *reinvested* as speedily as posible in other immovable property.

SEC. 5. Be it further enacted, etc., That the Board of Directors shall, in each and every year, as soon as may be after the appointment of the officers above mentioned, appoint AS A COMMITTEE, by an order entered on the minutes, *five* competent persons, to be chosen from among the *male members* of this corporation. The said commit-

tee shall be styled, the "Real Estate Committee," and shall serve for one year from the date of their appointment. In case of the death or resignation of any member of said committee, the Board of Directors shall, at their next meeting, fill the vacancy so occurring. The said committee shall appoint one of their number chairman, whose duty it shall be to preside over the deliberations of said committee and communicate with the Board of Directors. It shall be the province of said committee *to assist* with their advice the Board of Directors in all matters pertaining to the *real estate* of said corporation in the *investment of funds,* in the ordering of new buildings, repairs and improvements and in making contracts for the same, and *in disposing* of any property of said corporation by sale, *exchange* or *otherwise,* in conformity with the provisions of this charter.

SEC. 6. Be it further enacted, etc., *That said corporation* SHALL ENJOY *the same exemption from taxation as was enacted in favor of the Orphan Boys' Asylum of New Orleans by the act approved March 12th, one thousand eight hundred and thirty-six, entitled "An Act for the relief of the Orphan Boys' Asylum of New Orleans."*

SEC. 7. Be it further enacted, etc, That the Association named in the preamble of the present act is hereby authorized, *if its members shall so desire* after the present corporation is organized, to transfer all or any part of the property and assets of said Association *to the corporation by this act created,* and for the uses and purposes of

this charter, and *surrender* the corporate franchises of said Association.

(signed) E. WARREN MOISE,
Speaker of the House of Representatives.

(signed) W. T. GRIFFIN,
President pro tem. of the Senate

Approved April 29th, 1853.

(signed) P. O. HEBERT,
Governor of the State of Louisiana.

Printed Rec. p. 12

The act of 1836, made part of charter, may be found on pages 88 and 89 of Record, and in Statutes of Louisiana, sessions 1836, page 135, which is agreed may be cited from the printed acts. It reads:

"AN ACT,"

For the relief of the Orphan Boy's Asylum of New Orleans:

"*Be it enacted by the Senate and House of Representatives of the State of Louisiana in General Assembly convened:* That from and after the passage of this act *all* the property, real and personal, belonging to the Orphan Boys' Asylum of New Orleans be and the same is hereby exempted from all taxation either by the *State, Parish* or *City* in which it is situated, any law to the contrary notwithstanding." Approved March 12, 1836.

The "powers and privileges (of a corporation) may as well be designated by reference to the charters of other companies as by special enumeration." 96 U. S. 510.

Our adversaries contend and the Louisiana Court has held that article 118 of the Constitution of 1868 has repealed the exemption. The portion of the article necessary to be cited is the following: "Article 118. Taxation shall be equal and uniform throughout the State. *All property shall be taxed in proportion to its value*, to be ascertained as directed by law. The General Assembly shall have power to exempt from taxation property actually used for church, school and charitable purposes. The General Assembly may levy an income tax upon all persons pursuing any occupation or calling. All incomes shall be *pro rata* on the amount of income or business done." * * * * *

III. As we have already said, the action for the city tax of $1350 was defended on the ground that the assessment af any tax was a violation of the charter, and repugnant to the Constitution of the United States.

In the lower Court the City Attorney contended that the language of these acts did not apply to the future acquisitions of property, but conceded that if the company had any property at its creation, such pro[illegible] exempt. *See printed Recep. 28, Brief as*

The District Court rendered judgme[illegible] Asylum.

An appeal was taken to the Supreme Court. As no one, at that time, supposed that the Legislature had power to amend, impair by changing or altering a charter, the question of the right of future legislation to

amend a charter was not argued before the Supreme Court. That Court, however, overruling all the previous decisions without the slightest reference to them, made the point for themselves, and decided that article 438 of the Civil Code of 1825 gave the Legislature the right to amend charters, and affirmed the judgment. This article, and the chapter in which it stands, are copied into this brief into another place.

IV. Assignments of Error.

First. The Supreme Court of Louisiana erred in holding that the Convention and Legislature of Louisiana had the right to impair the charter of St. Anna's Asylum, and to tax all property acquired by said corporation since the year 1868, and to burden said corporation with the taxes of the city of New Orleans; and said Court erred in refusing to give full force to the contract contained in the charter of plaintiff in error exempting its property from taxation.

Second. The Supreme Court of Louisiana erred by declaring that the said fire proof cotton press, the property of plaintiff in error, was rendered subject to taxation by section 118 of the Constitution of Louisiana of 1868, and that such Constitution could rightfully modify the charter of the plaintiff and render property acquired by the corporation after the date of the said Constitution, subject to taxation.

THIRD. The Supreme Court erred by deciding that the said charter of the plaintiff in error did not exempt the property of said corporation, acquired after 1868, from taxation.

FOURTH. Said Supreme Court of Louisiana erred in holding that said fire proof cotton press was subject to said city tax of $1350, imposed in virtue of said Constitution, statutes and ordinances under the same.

V. ARGUMENT.

As the Supreme Court of Louisiana has, ex proprio motu, made the point on which it has decided the case, it will be useful to consider briefly, as it has done, the history of this article of the Code on the subject of the dissolution of corporations.

It is very true, as the Court says in its opinion, that article 438 of the Civil Code of 1825 existed in the Code of 1808; but this does not lend any force to the argument, because at the time the Code of 1808 was adopted, there was only a territorial government. The Constitution was not adopted until 1812.

By the 20th section of article VI of that Constitution, it was expressly declared that "No *ex post facto* law, nor any law IMPAIRING the obligation of contracts shall be passed." The Constitution was subsequent to the Code.

From the date of this article of the Constitution of 1812 to the decision of this case, it has been uniformly

held by the Court, as a Court, that the Legislature could not impair the charter of a corporation implying a contract by amending or modifying it.

Whether the Legislature has power to *repeal*, by giving an indemnity, it is not necessary for us to discuss.

The Court will better understand the decisions by our quoting with precision *the title* of the chapter and the article of the Civil Code relied on by the present Supreme Court of the State. The *article* constitutes the *chapter*. It is as follows:

"CHAPTER 3."

"OF DISSOLUTION OF CORPORATIONS."

"Art. 438. A corporation legally established *may be dissolved:*

"1. By an act of the Legislature, if they deem it necessary or convenient; *provided*, that when the act of incorporation imports a contract on the faith of which individuals have advanced money or engaged their property, *it cannot be repealed without providing for the reimbursements of the advances made or making full indemnity to such individuals.*"

2. By the *forfeiture* of their charter when the corporation abuse their privileges or refuse to accomplish the conditions on which such privileges were granted, in which case the corporation becomes extinct by the effect of the violation of the conditions of the act of incorporation."

The most casual reading of the article shows, conclusively enough, that the subject of legislation was the

dissolution of corporations. They might be dissolved by repeal, by making indemnity: they might be dissolved by forfeiture.

The order of chapter 3 (and we have quoted it all) shows that it was the proper conclusion of the matter treated of in the three chapters of the Code under "TITLE X,"—"OF CORPORATIONS."

It is not pretended that there is any other provision of law, warranting an interference with private charters importing contracts, than the article and chapter of the Code quoted at length.

We repeat, that the decisions are uniform, with the exception of this case, that the Legislature cannot, under protection of this article, impair a charter by making changes in the persons composing it, and much less in rights of property, in any way except, possibly, by a repeal *with an indemnity*. Indeed, it is not certain, under the former decisions, that the *Legislature* could repeal at all.

The intention of the lawgiver seems to have been to reserve a power over corporations similar to that of eminent domain. The government was to have the right to DISSOLVE the corporation on condition, as in the case of eminent domain, that it provided an indemnity or reimbursement.

It must be observed that there is no provision in the Code, as there is in the legislation of many of the States, *that the right to repeal should apply to the grant of subsequent charters.*

The Court will also observe, that the article is dissimilar to the acts of the other States, in this: it does not provide for the amendment of charters, nor for the right to withdraw the franchises granted the corporation. It treats of another subject—the DISSOLUTION of corporations.

The simple power to DISSOLVE the corporation by a repeal of the charter on condition of indemnity was all the article of the Code contemplated. Special provision against the dissolution of the charter without full indemnity is made in the very body of the article.

The language is, "PROVIDED, that when the act of incorporation *imports a contract on the faith of which* INDIVIDUALS have advanced money or engaged their property, IT CANNOT *be repealed* without providing for *re-imbursements* of the advances or making FULL INDEMNITY to such *individuals*."

The makers of the Code, therefore, only intended to permit the Legislature in the future to exercise the right of eminent domain over corporations, so far as to dissolve them by making indemnity, as in other instances where property is taken and condemned for public uses.

Without elaborating the point further, we may safely conclude that article No. 438 of the Code of 1825 has not made any provision for the amendment and modification of subsisting charters of corporations where such charters imply a contract; but in all such respects, Louisiana charters are fully under the protection of the Constitution of the United States.

But the Legislature may *repeal* a charter by making full indemnity.

Hence, the act contemplated to be done by article No. 438 was to *dissolve* the corporation—declare its dissolution. When such an act is done, the corporation no longer *exists*—it is *extinguished.*

But the Constitution of 1812, subsequent to the Code of 1808, declares that no "law impairing the obligation of a contract shall be passed." This was also declared by the Constitution of 1845, subsequent to the Code of 1825, and also by the Constitution of 1852, in force when plaintiff's charter was passed by the Legislature.

VI. Up to the time of the present decision, the law has been considered by the Court and the profession well settled, that the provisions of the Constitution of the United States protected all charters from impairment by amendments and modification. The learned and able counsel for the city did not even make the question. p. 28—31

It was too well understood to admit of litigation.

Every time the question was raised even incidentally, since 1840, it was met by a denial of the power of the Legislature to impair the contract by amendment.

One of the first cases where the question was raised was that of Boisbere et al. vs. Citizens' Bank, 9 L. R. 511, decided in May, 1836, by the eminent bench presided over by Judge Martin. The doctrine of the case is stated in the syllabus as follows:

"If an act *amendatory* of the original charter of a bank, involves the destruction of a vested right or impairs an obligation, it will be declared to be unconstitutional and void."

See case 9 L.R. 506–515. The case is the more important because Mr. Attorney General Morphy, (afterwards a Justice of the Supreme Court, who concurred in the doctrine of the case) expressly made the point to the Court in these words:

"IV. The Legislature have the right to dissovle *or modify* a corporation legally established when they deem it necessary or convenient to the public interest. Louisiana Code, Article 438, page 508." The Court in that case is positive; clearly overruling Mr. Morphy's argument by declaring that the Legislature *cannot* impair the contract by *amendment.*

The leading case on the point, however, was the great case of Montpelier Academy Trustees vs. George et al., 14 L. R. 395. The case was decided in January, 1839, and the opinion pronounced by Judge Carleton, and the rehearing by Judge Morphy, who expressly made the point in the 9 L. R. 508. During the time the case was under consideration, the following eminent and experienced ju lges were on the supreme bench, viz.: Martin, Roste, Eustis, Morphy, Carleton, Bullard, Simon.

The Montpelier Academy case was very similar in its features to the Dartmouth College case, only the State was one of the donors, and gave $2500 per annum. The

State had, by the amended act, added five other persons to the number of the Board of Trustees.

Counsel for the defendant relied, among other things, on article 438 of Louisiana Civil Code, (Old Code, page 92, art. 22,) as had been done in 9 L. R. 508.

The Supreme Court stated the point made by defendants as follows:

"It is contended by the defendants, that the Legislature had full power to *alter or abolish*, at pleasure, the law creating the corporation, and they cite the Louisiana Code, article 438, which declares that a corporation legally established may be dissolved by an act of the Legislature if they deem it necessary or convenient for the public interest; *provided*, that where the act of incorporation *imports a contract*, on the faith of which individuals have advanced money or engaged their money, *it cannot be repealed* without providing for the reimbursements of advances made or making full indemnity to individuals, etc." 14 L. R. 405.

The Court concludes its elaborate opinion in these words:

"We are then of opinion that the law of 30th March, 1833, incorporating the Montpelier Academy, was in the nature of a contract between the State, the trustees therein named, and the donors of property, for the benefit of that institution, and that the acts of the Legislature of 9th January, 1834, and of 20th January, 1836, above cited, are repugnant to the Constitution of the United States and that of Louisiana." 14 L. R. 410.

Judge Morphy, who as counsel had made the point in 9 L. R. 508, pronounced the opinion on the rehearing, showing that another full argument had not changed the views of the Court. Page 410. None of all the judges taking part in the decision dissented.

The case was considered as finally settling the law, and was always followed by the Court.

See N. O. Gas Light Company in 6 Ann. 458.

Boylan and Lang vs. Shaffer, 13 Ann. 129–136.

In the case of the State ex rel. Attorney General vs. Accommodation Bank, it was necessarily assumed as an understood postulate that a charter could not be modified by the Legislature. 26 Ann. 288. *It was expressly applied to exempt the property of the Poydras Female Asylum from taxation in the case* of the State vs. Campbell, 23 Ann. 445. So of the State Bank Municipality No. One vs. Louisiana State Bank, 5 Ann. 397, and in City vs. Branch Louisiana State Bank, 10 A. 762. Citizens' Bank vs. Bonny, 31, not yet reported.

It has been supposed that the case of Palfrey, Receiver, vs. Paulding, 7 Ann. 363, is somewhat in conflict with the long current of decisions maintaining the integrity of charters of corporations.

That case was one of *forfeiture* of charter. Three judges out of the four of that Court gave their views in the decision.

As Judge Rost concurred in the Montpelier Academy case, there is no reason to suppose that his opinion

had changed as to the inability of the Legislature to change and alter an act of incorporation.

He alone of the Judges thought that the latter clause of act 438 of the Civil Code justified the Court in decreeing the FORFEITURE for an abuse of its privileges. The other Judges do not seem to have concurred even with this view of the case. There was no analogy between the two cases.

The case of Guillotte vs. the City of New Orleans, 12 Ann. 432, concerns the assize of bread, and has no application to the case at bar, and lends no support to the present conclusion of the Supreme Court of Louisiana. The Judge who was the organ of the Court in 13 A. 129 never doubted the Montpelier Academy case, and fairness would seem to require a reference to his declared opinion.

Four different Supreme Courts of Louisiana and no less than twenty Supreme Judges, without one dissent, have concurred in this settlement of the law. We therefore may reaffirm what we have heretofore asserted, that the law was well settled when our charter was granted by the Legislature and that the law as then understood formed a part of the contract.

The Constitution of 1845, subsequent to the decision in the 9th and 14th Louisiana Reports, prohibited the impairing of the obligation of contracts. Const. article 109. The Constitution of 1852, affirming the same thing, was in force when our charter was granted.

This last Constitution provided in Article 105, that "No *ex post facto* law, nor law impairing the *obligation* of con-

tracts shall be passed, *nor vested rights be divested*, unless for purposes of public utility and for adequate compensation previously made."

VII. The legislative department held the same view as the Court; for in 1848, by a general act authorizing the organization of corporations in reference to manufactures, agriculture, navigation, insurance and corporations other than religious and charitable, it provided as follows:

"Sec. 25. Be it further enacted, That nothing in this act contained shall in anywise be construed or interpreted *as a contract* between this State and the stockholders of any corporation formed under it or with such corporation when formed, but the Legislature shall have at all times the right *to alter or amend* this law and so apply such alterations and amendments, as well to corporations existing at the time such alterations or amendments are made as to those that may be thereafter formed." Acts Session 1848, page 77.

If the law had been understood as our adversaries understand article 438 Civil Code, (as applicable to all corporations), the above 25th section in reference to the special class of corporations would have been useless, for it would have been enacting in reference to a class what had already been provided for the whole.

The section differs from article 438 Civil Code in this: It permits *alterations* and *amendments*. It does not treat of the dissolution of corporations at all, and this power

of amending was repealed in 1855. Acts Session 1855, page 184, Record 10.

It follows that there was no reservation of any right on the part of the State to take away and diminish the rights, immunities and franchises granted by our charter during its existence. The charter was made, as the preamble says, for the *greater security* of the benevolent persons who should feel disposed to give.

It was understood by all parties as the Courts and the lawgiver understood it, that the charter could not be impaired by amendments, and the present Supreme Court of Louisiana is not at liberty by new interpretations to destroy the franchises of the company.

State vs. Thompson, 10 Ann. 123. The Constitution of 1852 was adopted with the judicial interpretations attached. La Selle & Bro. vs. Whitfield, 12 A. 81; James vs. Thompson, 12 A. 175; King vs. Lastrapes, 13 Ann. 583.

VIII. But if we concede that article 438 C. C. is still in force and unmodified by the subsequent interpreted constitutions, it will not justify the judgment of the lower Court.

We deny *in toto* the proposition that the right to dissolve a corporation includes the right to change, alter, mutilate or deform a corporation, or shear it of its franchises; and it is not true, and it cannot be maintained as a legal proposition, that the right to *dissolve* or repeal a charter implies the right to maim, impair, or despoil it during its existence, and there is no warrant in our law

for such conclusion. To dissolve is not a *generic* term, covering the expression to alter and modify and perpetuate in a modified form.

It may be logically true in a syllogism, that the major includes the minor homogeneous proposition. But it is neither in law nor logic, that the same may be affirmed of dissimilar things, actions, or conduct. A license to do one thing in one way, is not a license to do other things at pleasure in other ways, though they may be less (if appreciated by the ordinary standards of *value*, *weight* and size) to the thing permitted to be done. A right to firebote for the year does not justify the reaping of grain enough to last the family a week. Measured or weighed, a bushel of wheat is "greater" than a peck of flaxseed, but if in this instance it were affirmed that the greater included the less, it would not meet with assent from every one.

A Court has the right to pass sentence of death on the convicted murderer. The whole is greater than its parts. Yet the Court would not have the lesser right to order the limbs of the culprit to be cut off or his eyes to be burnt out with red hot irons, in order to inflict a lesser amount of death: merely death to his eyes or his limbs.

The Court may decree that the mortgaged property shall be sold to pay the mortgage debt. But it would be error for the Court to order the trees, on a plantation to be cut down and sold, or that the machinery should be taken out of the sugar house and sold, or that the sugar

house itself should be pulled down, in order to sell the brick to pay the mortgage.

It is even possible that the criminal might prefer that the law should take its course, rather than live a mutilated being, and the mortgagor might demur to the destruction of his property by waste.

So as to an act of incorporation. The destruction of a part of the franchises of the charter might be more injurious than the dissolution of the corporation with a full indemnity.

A bank charter is granted with the right to loan money at eight per cent.; an amendment requiring it to loan at two per cent. would be much more disastrous to the stock holders than to *dissolve* the corporation with an indemnity, and to return to the stockholders what they have invested.

A railroad company is chartered for the purpose of making a road between termini connecting with other roads, to secure through travel. The value of the stock depends upon the connection with other roads. The Legislature, after the most of the road has been built, but before the right of way has been fully obtained, amends the charter and prohibits the connection from being made. A dissolution of the charter with the indemnity would be much more favorable to the stockholders.

Take our own case. Dr. W. N. Mercer, under the security of the charter, built the Asylum on valuable grounds bought by himself, at a total cost of not less than $100,000, perhaps $120,000.

He intended by his will to give not only stock but real estate to provide revenues for the support of the inmates, on condition that the *whole of the income* could be applied to that purpose. This was the "point of security" he demanded. The Asylum was built on the faith of the pledge that the gifts to the institution which it was the wish of his life to make, should not be taxed. Could he have known that an attempt would be made to tax the income ($2700 for City and State tax,) he would not have given what he did to the Asylum. No doubt, if Dr. Mercer were alive, he would say, I greatly prefer that you should dissolve the corporation and reimburse me the amount of money I have paid on the Asylum and in maintaining the same, in order that I may bestow my charities elsewhere, rather than you should compel me to submit to a tax of $270) per annum out of an income devoted to the support of indigent persons, whom it is the duty of the City and State to maintain. I made no such agreement with you.

According to the settled law, the charter which we produce was *a contract* between the State and the individuals who gave their means on the pledge of the faith of the State.

Indeed, the present Court says, in its opinion: "We grant to the fullest extent the doctrine of contract as resulting from the creation of a private corporation."

The terms of the contract were clear and unambiguous. The *amendment* of the charter by the Legislature or Convention was nothing more nor less than making a *new contract*

by one party without the assent of the other; for after the amendment, it would not be the same thing it was before.

A *power* to *dissolve* a contract and remit parties to the *statu quo* is a very different thing from a power retained by one party to modify the contract at his pleasure; for the latter is the same thing as a power for one party to make a new contract on the same subject matter.

Suppose a contract is made between A and B, in which there shall be a positive condition in A's favor to enable him to *dissolve* the contract. If A claimed under the contract the right to make it more favorable to himself, and perpetuate it, because the greater includes the less, it would be declared simply absurd.

Cases have been cited where the Legislature or the people in their Conventions, in some of the States, have expressly reserved the power to change, alter, amend or destroy charters of corporations when granted; but in cases where such laws have been passed, it has been declared that such laws were to apply *to all subsequent charters,* unless the contrary be expressed in the charter.

Take Georgia, for example: Section 1052 reads, "Persons are either natural or artificial. The latter are only creatures of the law, and except so far as the law forbids it, *subject to be changed, modified or destroyed at the will of the creator.*" Section 1082: "In all cases of private charters *hereafter* granted, the State reserves the right to withdraw the franchise, *unless such right is expressly negatived in the charter.*"

But in these States, the plain reservation of the law

has been recognized by the Courts of such States. And it has not happened in any of them, that after their Courts have interpreted the meaning of the law, and adhered to such interpretation with entire unanimity for more than forty years, and millions of property have been invested under such interpretation, that all at once a new light has broken in upon the vision of the Court, and scales have fallen from its eyes, by which it has been discovered that all its predecessors dwelt in gross darkness, and that corporations had made great mistakes in trusting to the decisions of the Court at all.

IX. The paramount law of Louisiana, adopted in the *Convention* of 1852, declares that the obligation of contracts shall not be impaired by the Legislature.

An older law, however, has said that the Legislature may *dissolve* corporations on making indemnity.

We have shown that the law was always understood to prohibit the Legislature from *amending* and *modifying* charters. The illustrations we give show there is no applicability of the right to *dissolve* a corporation, to cover changes, amendments and modifications of charters. The one operation extinguishes and annihilates the corporation. The other impairs the charter and changes the character and efficiency of the intellectual being called the corporation, while it is still permitted to exist. The one kills outright, but indemnifies the corporators for the losses. The other mutilates, and refuses indemnity.

Supposing the article 438 C. C. is a *reservation of*

power to dissolve corporations, we may perhaps obtain some assistance from the language of the Code itself in its interpretation.

If the Legislature had intended to confer the right on future Legislatures to *amend* or *modify* charters, they no doubt would have said so in the article in question, as the other States have said; but no such right is mentioned.

X. If the Legislature had supposed that the right to amend, modify and change acts of incorporation was the same thing as terminating by dissolution through an act of the Legislature, they would have provided that the *corporation itself* which would be injured by the amendment should receive indemnity. No such thing is intimated by the article of the Code. The persons who are to receive the full indemnity were the "*individuals*" who had advanced their money or engaged their property on the faith of the charter, and whose rights would revive on the dissolution and extinction of the charter.

An inspection of the Civil Code of 1825, from sections 418 to 438, will show that the lawgiver had no other subject in his mind when

'CHAPTER 3."

"OF THE DISSOLUTION OF CORPORATIONS.

was enacted. In chapter one of title 10 the Code treats "Of the Nature of Corporations, of their Uses and Kinds." Chapter 2 treats "Of the Rights and Privileges of Corporations and of their Incapacities;" and chapter

3, containing only one article (438), treats "Of the Dissolution of Corporations."

It seems to us a forced conclusion, to say that the Legislature, while treating *ex professo* of the end and termination of corporations, were really providing for their *continuance* and perpetuity in a modified form.

Based on such cogent reasons, we cannot refrain from thinking that the decision of the experienced and eminent judges who took part in the Montpelier Academy case was right. *They heard argument on the question*, and decided that article 438 of the Civil Code, in the face of the Constitution, furnished no warrant to the Legislature to amend, alter or change acts of incorporation against the will of the incorporators.

When a corporation was created, it was placed under the protection of the Constitution *so long as it should exist.*

That was the settled law of Louisiana, beyond peradventure, when the charter of the plaintiff in error was granted. The charter, as we have seen, was granted upon ample consideration to the State. Her indigent and destitute females and helpless children were to be fed, clothed, sheltered, cared for in sickness—the children instructed, and all maintained. This burden upon the State was assumed by the Asylum, and thus the State and City relieved of the expense. Dr. Mercer furnished the Asylum; the ladies, since the organization, have in twenty-six years, raised and expended over $200,000 for the support of the inmates. The State not only ob-

tained this assistance, but it also acquired a permanent right of control over the property to be given to the corporation. For it provided in the 4th section, "That *no alienation* of the *immovable property or stocks* by this corporation shall be made or have any validity, unless accompanied by the certificate of the mayor of the City of New Orleans, setting forth that he has duly examined and considered such proposed alienation, and is satfied such alienation is for the advantage of such corporation." Record, page 45. And the State required, by a proviso in the same section, that the proceeds of the sales of real estate should be reinvested in other real estate.

In consideration of the benefit to be derived to the State and City, they conceded to the benevolent corporators the right and franchise of capacity of having "*perpetual succession*, and of TAKING, RECEIVING, PURCHASING, POSSESSING AND ENJOYING all kinds of property whatever, real or personal, by gift, grant, sale, bequest, exchange, or by any other mode of conveyance or transfer whatsoever." It was not said this right of acquisition would expire in five, ten or twenty-five years.

Perpetual succession was granted with this right to acquire property. The right to acquire was to be commensurate with the corporate existence and the performance of the corporate duties. The right was given to acquire property in 1853, in 1874, and at all other times, "For ye have the poor always with you."

The Legislature expected and desired these acquisitions. It expected Dr. Mercer to furnish the grounds and

build the capacious Asylum, which he did. It expected him to give his productive gas stock for a revenue, which he did not give. They expected him to give his cotton press, and he gave it, and it now produces about twelve thousand dollars gross income. And to give the benevolent, (Dr. Mercer included,) as the preamble recites, more "satisfactory" "provisions *in point of security*," the act of incorporation provided that the corporation should *enjoy* the same exemption from taxation as was enacted for the Orphan Boys' Asylum March 12, 1836. That is, ALL the property of the corporation, real and personal, was exempted from all taxation, either by the State, City or Parish in which it is situated. Record page 62, pages 88, 89. The corporation could not own anything until it was created, and the exemption which the State guaranteed it should enjoy was for the property thereafter to be acquired. *It was* ALL *to be exempted* from taxation.

XI. But suppose it be conceded, for the mere purpose of argument, for it cannot be true, that the power to *dissolve* does not mean to dissolve and destroy, but on the contrary, means to perpetuate and continue in a mutilated form. The Constitution of 1868 and laws thereunder are repugnant to the Constitution of the United States, because they do not, as contemplated by the article 438 C. C., provide either for "REIMBURSEMENT" or FULL INDEMNITY for the withdrawing of the immunities or franchises of the corporation.

It is not to be supposed that Dr. Mercer would have

built the Asylum at all, if he had supposed that his plan for its perpetual maintenance was to be met and thwarted by the State itself, for whose benefit he was willing to contribute his wealth. He had insisted, as well as the other donors, on a "point of security," and it was on the strength of this security that he built the Asylum at a cost of $120,000. It was on the same security that the ladies labored in hope, keeping up the institution and maintaining the indigent inmates at an expense of not less than eight or ten thousand dollars a year, amounting to a sum largely in excess of $200,000.

The point of security was the immunity by which *all* the property, real and personal, was to be exempt from taxation This immunity was valuable. It was equivalent to property, for it made the property so much the more productive.

The City levies an annual tax of $1350. The State assesses a tax equally large, making $2700. The perpetual levy of these large sums is the equivalent, at least, of *twenty-seven thousand dollars* taken from the institution; for it would take $27,000 to earn the money. It thus impairs the estate of the corporation $27,000.

It does not matter whether you consider it as an infringement of the right guaranteed by two different sections of the charter to acquire property, or as a restriction of the right of property itself, it impairs the franchise, granted to the corporation by the charter, to acquire property free from taxation.

XII. *It is a fraud,* after inducing this large expenditure of money in establishing the Asylum on the assurance that the stock and real estate which were to produce the revenues to maintain the Asylum were, with other property, to be exempt from taxation, to *refuse* to carry the contract into effect in good faith. It was as well known then as now, that a corporation could not maintain the indigent without a revenue wherewith to buy food, raiment and fuel. Dr. Mercer was willing to provide for this by will, and the Legislature was willing to give him the *security,* in order to have the benefit of his munificence.

The immunity or franchise being *valuable,* and acquired by more than an equivalent, could not then, even under the reading our adversaries give the article of the Civil Code, be taken from the corporation without "*full indemnity.*"

The day the State made the contract, it applied to all the property the Asylum might acquire. This immunity was not less valuable, the day it was granted than twenty-five years after. And the Legislature is just as much bound to allow exemption from taxation as it is bound to permit the Asylum to receive gifts and legacies, as allowed by sections 1 and 4. And it has no more right to take away the one immunity without indemnity than the other. For if the immunity from taxation, secured by a charter, is something so *valuable* that this Court will interpose its power to prevent its violation, then it cannot be treated

as a thing of *no value*, and as one where no indemnity is due for destroying it.

State of New Jersey vs. Wilson, 7 Cranch R. 164.
Wilmington R. R. vs. Reid, 13 Wal. 264.
Humphreys vs. Peques, 16 Wal. 249.
Pacific Railroad Co. vs. Maguire, 20 W. 44.
Jefferson Branch Bank vs. Skelly, 1 Black, 448.
Morgan vs. Louisiana, 93 U. S. 217.

See Cooley on Constitutional Limitations, 279, 280, 281, and notes.

The Supreme Court of Louisiana seem to think that because the cotton press was not acquired before 1868, therefore, under their view of the case, no indemnity is due, because they say the Constitution changed the charter, and therefore, they say in substance, when Dr. Mercer died and the property came into possession, the charter had been changed on the subject of taxation. But we have just seen that the franchise or immunity, as your Honorable Court indifferently calls it, was itself a valuable right, for which the indemnity was due.

But let us consider the point further. This corporation was created under the expectation *that stocks* and *other productive property* would be acquired and produce revenue enough to maintain the destitute females and helpless children to be received into the Asylum. As we have seen, the first step in establishing an Asylum is a large outlay for the grounds and buildings, which, instead of producing income, are the source of considerable annual expense. But this outlay and expense would not have

been undertaken but for the agreement on the part of the State that other property might be acquired which would produce revenue free from taxation. The *privilege and franchise* claimed had been paid for ten fold. *It had cost* capital to buy it.

The Canal Bank of this City, years ago, was compelled to build a canal: suppose after it had built the canal, but before the bank capital had been paid in, the Legislature had undertaken to restrict the rate per cent. of interest, as we have mentioned in another instance; could it be said to the Bank, "But we changed your charter before you paid in the money on which to carry on your banking operations, therefore the charter was changed and we owe you no indemnity. You have lost money on the canal, and that is your lookout."

Indeed, the question seems recently to have come before the present bench in the case of the Citizens' Bank vs. Bouny, 31 Ann. not yet reported, where the Louisiana Court holds that the Citizens' Bank is protected by its charter from taxation against the Constitution of 1868, because she has given a valuable consideration! Has not the Asylum (or its friends for it) given a valuable consideration in building the Asylum and maintaining its inmates and subjecting its property to the control of the public authorities?

Other illustrations will occur to the mind, and it is thus seen that the original investment must be returned or the purchase paid for, if the charter is to be amended.

We do not think that this Court will be driven to exam-

ine the case in this aspect, for we have no idea that there is any ground for supposing that there was any law authorizing the Convention, the Legislature or the City, to *amend and alter* the charter. The subsequent Constitutions of 1845 and 1852, which have been entirely overlooked by the Supreme Court of Louisiana, were of higher authority than the Civil Code of 1825, which only permitted the dissolution of corporations, and not the changing of their charter.

XIII. The decision in this case, we have observed, was arrived at on a point *made by the Court without argument*, and is therefore not entitled to so much weight as a case where both sides have been heard. The Judges who grace the Supreme Court of Louisiana, and who have decided such a vast number of cases in a single year, could hardly have known of the decisions we have cited, at the time they were rendered, and their industry, though marked, does not seem to have brought these controling cases to their attention, while they have merely found the dicta of one or two of the Judges on other subjects, but whose views on this they seem to have entirely misapprehended.

Indeed, it is but just to the Supreme Court of Louisiana to say that since the decision in this case, the Court seems to have retraced its steps.

The Citizens' Bank of Louisiana was created in 1833. By the 14th section, the power was conferred to subscribe the whole or a part of the stock of the Lake Borgne

Navigation Company. Acts 1833, page 183. By the 35th section these rights were to be ceded to the State, but in consideration thereof, the Citizens' Bank was to be exempt from taxation. Subsequently the Legislature relieved the Citizens' Bank from the obligation to make the cession. It was claimed that certain surplus of earnings were subject to taxation. The Supreme Court of Louisiana said:

"But where the exemption is granted upon a valuable consideration fixed and accepted by the State, such exemption is a contract between the State and the corporation, if within the constitutional power of the Legislature. It becomes a vested right, which the Constitution of the United States forbids the State to violate or impair; and the organic law of Louisiana, from the foundation of the government to the present time, has respected and consecrated the inviolability of contracts, and is founded in common honesty and the obligations of good faith. Consts. 1812, article 5, section 20, 1845, article 109; 1852, article 105; 1868, article 110."

This case, at the time of printing this brief, is not reported in the incomplete numbers of the 31 Annual Reports, where it belongs. It is entitled the Citizens' Bank of Louisiana vs. Bouny, Tax Collector. *The consideration* which results from the donations of the benevolent, in *property and money*, devoted to the purposes of relieving by way of charity the proper burdens of the State, ought not to be considered less valuable because given with an

open generous hand, than if higgled for by some one who was to give an equivalent in return.

The three or four hundred thousand dollars of Dr. Mercer and the other benevolent persons, spent on the St. Anna's Asylum and for maintaining its inmates for twenty-seven years, were as good and honest money and as much a consideration in the eye of the law, as the remitted consideration of the stockholders of the Citizens' Bank, who were to make money out of their stock to enrich themselves.

If the Constitution of 1868 is void, as it respects the exemption of that great and powerful corporation, the Citizens' Bank, from taxation, it is void as to the St. Anna's Asylum, whose exemption in its charter was made under the same Code, with the additional guarantees of the Constitution of 1852.

Besides, this Court has repeatedly said that the Constitution protects parties against the least as well as the greatest impairment of the obligation of a contract.

Van Hoffman vs. City of Quincy, 4 Wal. 552.

XIV. "The law as settled at the time of the contract makes a part of the contract." The City vs. Lawson, 9 Wal. 487; Gelpeke vs. Dubuque, 1 Wallace, 175.

At all events, this Court has always reserved to itself the right to examine and determine for itself whether the obligation of the contract had been impaired.

Jefferson Branch Bank vs. Shelly, 1 Black. 443.

The Binghampton Bridge, 3 Wal. 74.

XV. Assuming that the Legislature had no right to *amend* our charter, and thus make a new contract with the benevolent donors who have built up and maintained this great charity at such a large cost, we find the Asylum amply protected by the decisions of this high tribunal. The decisions are so ample, so decisive, so well known and recent, that they scarcely require to be cited.

See

Northwestern University vs. The People of Illinois, 98 U. S.

Home of the Friendless vs. Rouse, 8 Wall. 430, 436.

Washington University vs. Rouse, 8 Wall. 439.

Central Railroad Company vs. Georgia, 92 U. S. 665.

Chesapeake and O. R. Co. vs. Virginia, 94 U. S. 718.

We respectfully submit, that the judgment of the Supreme Court of Louisiana ought to be reversed, and that it should be directed to render a final judgment in favor of the plaintiff in error, with costs.

E. T. MERRICK AND
G. W. RACE,
For Plaintiff in Error.

SUPREME COURT OF THE UNITED STATES.

No. 218.

ST. ANNA'S ASYLUM, ETC., PLAINTIFF IN ERROR,

versus

THE CITY OF NEW ORLEANS, DEFENDANT IN ERROR.

WRIT OF ERROR TO THE SUPREME COURT OF LOUISIANA.

Brief for the City of New Orleans.

Attorney for the City of New Orleans.

A W Hyatt, Print, 73 Camp St. N O—21.336

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WRIT OF ERROR TO THE SUPREME COURT OF LOUISIANA.

Brief for the City of New Orleans.

The City of New Orleans sued plaintiff in error for the tax of 1876 on property owned by it and rented as a cotton press.

Plaintiff in error answered, in substance, that it is a charitable Institution, exempt from taxation, that its property and revenues are used for the charitable purposes of its organization, and that said cotton press, as well as all of its property, is exempt from taxation. The exemption being claimed by virtue of the 6th Sec. of the act incorporating said Asylum, approved 29th day of April, 1853, which reads: "That the said corporation shall enjoy the same exemption from taxation as was enacted in favor of the 'Orphan Boys' Asylum of New Orleans,' by the act approved March 12th, one thousand eight hundred and thirty-six, entitled 'An Act for the relief of the Orphan Boys' Asylum of New Orleans'" And the section referred to in said last mentioned act is in the following words, viz:

"That from and after the passage of this act, all the property, real and personal, belonging to the Orphan Boys' Asylum of New Orleans be, and the same is hereby exempted from all

taxation, either by the State, Parish or City in which it is situated, any law to the contrary notwithstanding."

And it is claimed that said exemption clause is a contract with the State which no subsequent law can affect, and that the tax claim set up by the City impairs the obligation of said contract, and violates section ten of article one of the Constitution of the United States.

The Supreme Court of Louisiana decided otherwise, and sustained the City's claim, and thereupon error is assigned.

ARGUMENT.

The able brief of the Counsel, who appeared for the City of New Orleans before the Supreme Court of Louisiana, being by agreement, (record page 27) incorporated as part of the record, is before this honorable Court at page 28 of the record, and its contents need not be here repeated.

The opinion of the Supreme Court of Louisiana (record page 22), to the attack upon which the learned and experienced Counsel for Plaintiff in error has devoted so large a portion of their brief, fully sustains itself, and little remains to be urged upon the attention of the Court.

Tried by the test of Tucker vs. Ferguson, 22 Wall. 575, and West Wisconsin R. R. Co. vs. Supervisors, 93 U. S. 595, the judgment in this case must stand.

The contract claimed must be shown to exist. "There is no presumption in its favor. Every reasonable doubt should be resolved against it. Where it exists, it is rigidly scrutinized, and never permitted to extend, either in scope or duration, beyond what the terms of the concession clearly require. It is in derogation of public right, and narrows a trust created for the good of all." Tucker vs. Ferguson, 22 Wall.

In the West Wisconsin R. R. Co. vs. Supervisors, 93 U.

S., the Legislature of Wisconsin exempted from taxation for ten years certain lands of the Railroad Co., and again in 1870 the Legislature extended the exemption for ten years, upon certain conditions, which were complied with, but in 1871 the Legislature repealed the exemption on a portion of the land, and it was sold for the tax of 1871, and this Court held that: "The State did what it had an unqualified right to do. In such cases, a reasonable doubt is fatal to the claim.

Prima facie, every presumption is against it. It is only when the terms of the concession are too explicit to admit fairly of any other construction that the proposition can be supported." And a number of authorities are cited by this Court to sustain these views. If there was no contract in that case there is surely none in the case at bar. No exemptions were guaranteed for a consideration, but as in the West Wisconsin Railroad case, the exemptions were "gratuities offered by the State, without any element of a contract." "There was no assurance or intimation that they were intended to be irrevocable, or that the laws in question should not be at all times subject to modification or repeal in like manner as other legislation. If a different intent had existed, it would doubtless have been clearly manifested by the language employed." "Neither party was, nor was intended to be, in any wise bound to the other."

In 1868, the State of Louisiana, by Art. 118 of her Constitution of that year, provided that, "*all property shall be taxed*," *etc.*, that "the General Assembly shall have power to exempt from taxation, property *actually* used for church, school or charitable purposes," etc.

In 1870 and 1871, the Legislature, acting under said constitutional provision, designated specifically, what property should be exempt from taxation, and in accordance with said constitutional provision, only exempted property actually used for charitable purposes.

(See Article of Constitution and Sections of Acts in Appendix.)

The tax here in question is for the year 1876 upon property rented for, and used as a cotton press only, and which was acquired by plaintiff in error after 1874. (See statement of facts, Record page 27). Therefore, if the exemption clause of the charter granted in 1853, was a contract, as claimed by plaintiff in error, but which is specially denied for the reasons before stated, it cannot possibly be stretched to apply to the tax in question.

This proposition needs no lengthy exposition before this Court. The doctrines involved are too well settled.

The portions of the argument on behalf of Plaintiff in error addressed to the feelings of the Court,—such as the good done by the Association, the praiseworthy action of its donors, the provisions of its charter for the guarantee of proper management, etc.,—do not enter into the consideration of the questions of law presented, and cannot be allowed to paralyze the vital functions of government.

For as the Court said in Tucker vs. Ferguson, "the taxing power helps to sustain the social compact, and to give it efficacy. It is intended to promote the general welfare. It reaches the interests of every member of the community."

On page 13 of the brief of Plaintiff in error, the statement is made that "In the lower court the City Attorney contended that the language of these acts did not apply to the future acquisitions of property, but conceded that if the Company had any property at its creation, such property would be exempt." This is clearly an error, for the same statement called forth a supplemental brief which was filed before the Supreme Court of Louisiana by the City's Attorney in which he says :

"Such language is so entirely opposite to my understanding and belief, that I perceive my learned adversary has misunderstood my expression, or its application. I most strenuously urge quite the contrary, for, by argument, well supported on good au-

thority, I have shown, in the original brief, p. 6, et sequitur, that at no time could the language of the statute, under which exemption is claimed, be extended to more than the property, *actually and directly* used and occupied *for and as the Asylum.*"

Respectfully submitted,

Henry C. Miller

Attorney for the City of New Orleans.

APPENDIX.

Appendix containing Article 118 of the Constitution of Louisiana, of 1868; Section 15 of Act No. 7 of the Extra Session of the Legislature of Louisiana, of 1870, and Section 2 of Act No. 42, of the Legislature of 1871, referred to in brief of defendant in error:

Article 118 of Constitution of 1868:

"Taxation shall be equal and uniform throughout the State. All property shall be taxed in proportion to its value, to be ascertained as directed by law. The General Assembly shall have power to exempt from taxation property actually used for church, school, or charitable purposes. The General Assembly may levy an income tax upon all persons pursuing any occupation, trade, or calling. And all such persons shall obtain a license, as provided by law. All tax on income shall be *pro rata* on the amount of income, or business done. And all deeds of sale made, or that may be made by collectors of taxes, shall be received by courts in evidence as *prima facie* valid sales. The General Assembly shall levy a poll tax on all male inhabitants of this State, over twenty-one years old, for school and charitable purposes, which tax shall never exceed one dollar and fifty cents per annum."

Sec. 15 of Act No. 7, of Acts of 1870, Extra Session. Session Acts, p. 38.

Be it further enacted, etc., "That the following shall, for the purpose of this act, be exempt from taxation:

First—All property, real or personal, exempted from taxation under the constitution and laws of this State, or of the United States.

Second—All property, real or personal, belonging to this State, or the United States, or the corporation of the City of New Orleans.

Third—Every building erected for the use of a college, incorporated academy, or other incorporated seminary of learning; every building for public worship, and the several lots whereon such buildings are situated, together with the furniture belonging to the same; *provided*, that the exemption from taxation of every building erected for the use of a college, academy, or other incorporated seminary of learning, and of every building for public worship, shall not extend or apply to any such building or premises, unless the same shall be exclusively used for such purposes, and unless the same shall be exclusively the property of an incorporated or religious society.

Fourth—Every poor-house, alms-house, cemetery, house of industry, and every house belonging to a company incorporated for the reformation of offenders, or for the refuge of the poor, and the several lots of ground whereon such houses are situated, together with the furniture belonging to the same, and all halls or edifices of Masonic, Odd Fellows and other charitable societies.

Fifth—All real and personal property of every public library.

Sixth—Each and every income which shall not exceed one thousand dollars a year, and household furniture to the value of one thousand dollars; *provided*, that no income up to the first thousand dollars shall be taxed.

Seventh—The bonds issued by the City of New Orleans, known as the consolidated city bonds, issued in payment of the consolidated debt of the City of New Orleans."

Sec. 2 of Act No. 42, of Acts of 1871. Session Acts, p. 104.

Be it further enacted, etc., "That the following described property shall be exempt from taxation:

First—All lands and lots of ground, with buildings, improvements and other structures thereon, and all other property belonging to the United States, to this State, or to any parish, city, or incorporated town in this State.

Second—Colleges, school houses and other buildings used for the purpose of education, and their furniture, apparatus and equipments, and the lots of lands appurtenant thereto and used therewith, so long as the same shall be used for that purpose only.

Third—The capital stock of literary institutions and of library associations and public lyceums.

Fourth—Public hospitals, asylums, poor-houses and all other charitable insitutions for the relief of indigent and afflicted persons, and the lots of ground appurtenant thereto and used therewith, and all their furniture and equipments, so long as the same shall be used for that purpose only.

Fifth—Churches, chapels, convents and other public buildings for religious worship, with their furniture and equipments, and the lots of ground thereto appurtenant and used therewith, so long as the same shall be used for that purpose only.

Sixth—Cemeteries and graveyards set apart and actually used for the purpose of interring the dead.

Seventh—Household goods, silver plate, jewelry and mechanic's and laborer's tools to the amount of five hundred dollars, in each household."